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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 8501.

SPECIAL CALENDAR

WASHINGTON GAS LIGHT COMPANY, *Appellant*,

v.

JAMES F. BYRNES, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Appellee*.

and

No. 8502.

SPECIAL CALENDAR

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Appellant*,

v.

JAMES F. BYRNES, DIRECTOR OF ECONOMIC STABILIZATION, BY PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Appellee*.

and

No. 8503.

SPECIAL CALENDAR

WASHINGTON GAS LIGHT COMPANY, *Appellant*,

v.

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Appellee*.

and

No. 8504.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, *Appellant*,

v.

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Appellee*.

Appeal from the District Court of the United States for the District of Columbia.

APPENDIX TO BRIEF FOR APPELLANT WASHINGTON GAS LIGHT COMPANY IN NOS. 8501 AND 8503.

I.

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS DESIGNATED BY APPELLANT.

Endorsed: Filed Nov. 18, 1942. Charles E. Stewart, Clerk.

3 United States District Court for the District of Columbia

No. 17805.

JAMES F. BYRNES, Director of Economic Stabilization, *Appellant*,

By LEON HENDERSON, Price Administrator of the Office of Price Administration,

v.

JAMES H. FLANAGAN, GREGORY HANKIN, and C. W. KUTZ, Being the Public Utilities Commission of the District of Columbia, *Appellees*.

Petition of Appeal

Now comes James F. Byrnes, Director of Economic Stabilization, by Leon Henderson, Price Administrator of the Office of Price Administration, this 18th day of November, 1942, and files this appeal and alleges that appellant is a party affected by the decision and order of the Public Utilities Commission of the District of Columbia, dated October 13, 1942 (Exhibit A hereto), proposed to be made effective as of September 1, 1942, determining, fixing, and ordering shedules of increased rates and charges for the sale of gas in the City of Washington, District of Columbia, by the Washington Gas Light Company; that no notice of such proposed increase was given by the Washington Gas Light Company prior to the entry of said order, but that on October 15, 1942, the Washington Gas Light Company, acting pursuant to the provisions of the Act of October 2, 1942, (Pub. Law 729, 77th Con.—2nd Sess.), amending to the Emergency Price Control Act of 1942, filed notice of such proposed increased rates and charges and later consented to intervention by the Director of Economic Stabilization;

4 that on October 19, 1942, a date subsequent to said decision and order, appellant filed a petition (Exhibit B) praying that the order of October 13, 1942, be vacated, that the proceeding be reopened for the purpose of receiving further evidence and hearing further argument, and that appellant be allowed to intervene and to file a brief, which petition was denied by the Commission by its decision and order of October 23, 1942 (Exhibit C), excepting that said Commission did permit appellant the opportunity of presenting evidence of a very limited nature and did permit him to intervene for such purpose; that on October 31, 1942, appellant filed a petition (Exhibit D) praying for an amendment of said order of October 23, 1942, to provide the specific relief requested in said petition of October 19, 1942, which petition of October 31, 1942, was denied by the Commission by its order of November 9, 1942 (Exhibit E); and that on November 12,

1942, appellant filed a petition for reconsideration (Exhibit F) with the Commission pursuant to paragraph 64 of the Act of March 4, 1913, as amended (D. C. Code, Title 43, Sec. 704; 37 Stat. 988, Chap. 150, Sec. 8; 49 Stat. 882, Chap. 742, Sec. 1), which petition was denied by the Commission by order dated November 16, 1942 (Exhibit G).

Pursuant to paragraph 65 of said Act of March 4, 1913, as amended, appellant assigns the following reasons for this appeal:

1. The Commission's decision and order of October 13, 1942, proposed to be made effective as of September 1, 1942, determining, fixing, and ordering schedules of increased rates and charges for the sale of gas by the Washington Gas Light Company is illegal because:

a. Said decision and order was made without giving the appellant the opportunity of full intervention as contemplated by the said Act of October 2, 1942, amending the Emergency Price Control Act of 1942.

b. Said decision and order is contrary to the program of the Federal government to prevent inflation and to stabilize the cost of living by preventing all further and avoidable increases thereof, in that it was entering without
5 a clear and convincing showing that the existing rates and charges were not sufficiently compensatory under present economic conditions or that the Washington Gas Light Company would be subjected to undue hardships if the existing rates and charges were continued in effect.

c. Said decision and order was entered in complete and utter disregard of the Government's program to control inflation and to stabilize the cost of living by preventing all future and avoidable increases thereof as provided by Congress in the Emergency Price Control Act of January 30, 1942, as amended by the said Act of October 2, 1942, and as enumerated by the President in his Executive Order No. 9250, dated October 2, 1942, and the policies of the Director of Economic Stabilization and the Office of Price Administration.

2. The Commission's decision and order of October 23, 1942, is illegal because:

a. Said decision and order denies to the appellant the full intervention contemplated by the said Act of October 2, 1942.

b. Said decision and order, insofar as it limits the participation by the appellant in this proceeding, constitutes an unlawful and improper restriction of the rights given to the appellant by the said Act of October 2, 1942, and the said Executive Order No. 9250.

c. Said decision and order is unlawful and improper in that it restricts the appellant to the presentation of "additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401" of October 13, 1942.

d. Said decision and order fails to provide for the vacation of the order of October 13, 1942, proposed to be made effective as of September 1, 1942, determining, fixing, and ordering schedules of increased rates and charges for the sale of gas by the Washington Gas Light Company, which was entered without opportunity of intervention by the appellant.

6 The appellant is aggrieved by said decisions and orders of October 13, 1942, and October 23, 1942, issued by the Public Utilities Commission of the District of Columbia and files this petition for the purpose of obtaining a review of such decisions and orders by this honorable Court pursuant to paragraph 65 of the Act of March 4, 1913 (D. C. Code, Title 43, Sec. 705; 37 Stat. 989, Chap. 150, Sec. 8; 49 Stat. 882, Chap. 742, Sec. 2). The purpose of this appeal is to prevent the Washington Gas Light Company from effecting the schedules of increased rates and charges which have been determined, fixed and ordered by said Commission and to save the appellant and the consuming public from this increase in the cost of living. Such purpose would be nullified and defeated if said company were allowed to demand and receive such increased rates and charges pend-

ing the determination of this appeal, and the appellant and the consuming public would suffer a substantial and irreparable property loss if they were required to pay such increased charges pending such determination. The efforts of the appellant to prevent increases in utility rates and charges which constitute an element in the cost of living will be greatly impaired if the said company is permitted to increase its rates and charges to the consuming public under the principles and terms set forth in the said order of October 13, 1942.

Wherefore, the Director of Economic Stabilization prays that this honorable Court will:

a. Specifically order that these proceedings shall operate as a stay of the Commission's order of October 13, 1942.

b. Order that an immediate hearing be held upon the above request for a stay, and fix a date for such hearing not earlier than three days after the date of filing hereof.

c. Issue an order containing such provisions as it
7 deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to insure the refund to the customers of said company of the amounts paid over and above those which would be paid under the presently existing schedules of rates and charges, if the Court considers that the operation of said order of October 13, 1942, should not be stayed pending the determination of this appeal.

d. Reverse, annul, and set aside said decisions and orders of said Commission.

e. Grant such further and different relief as to this honorable Court may seem proper under the circumstances of the case.

JAMES F. BYRNES,
Director of Economics Stabilization.

By LEON HENDERSON,
Price Administrator of the Office of Price Administration.

DAVID GINSBURG,
General Counsel.

NATHANIEL L. NATHANSON,
Assistant General Counsel.

HARRY R. BOOTH,
Utilities Counsel.

W. RUSSELL GORMAN,
Attorney.

Legal Division,
Office of Price Administration.

159 Endorsed: Filed Dec 10 1942 Charles E. Stewart, Clerk.

Answer of Washington Gas Light Company.

Comes now Washington Gas Light Company (hereinafter referred to as the "Company"), this 10th day of December, 1942, and files this answer to the Petition of Appeal filed in the above-entitled proceeding, and respectfully states as follows:

1. The Company is an interested party in the above proceeding in that Order No. 2401 of the Public Utilities Commission of the District of Columbia, dated October 13, 1942 (Exhibit A to the Petition) determined, fixed, and ordered rates, tolls, and charges to be charged by the Company for gas service in the District of Columbia.

2. The Company denies the averment that the Petitioner is a party affected by said decision and order of the Commission dated October 13, 1942.

3. The Company admits the averment that no notice was given the Petitioner of the proposed increase prior to the entry of said decision and order of October 13, 1942; the Company admits that notice was given the Petitioner on October 15, 1942 of the proposed increased rates and

charges; and the Company admits that it later consented to intervention by the Director of Economic Stabili-
160 zation.

4. The Company admits the averment that the Petitioner filed a petition with said Commission on October 19, 1942, praying that the Order of October 13, 1942 be vacated, that the proceeding be reopened for the purpose of receiving further evidence and hearing further argument, and that the Petitioner be allowed to intervene and file a brief; but the Company denies that said petition was denied by said Commission by its decision and order of October 23, 1942.

5. The Company admits the averment that the Petitioner filed a petition with said Commission on October 31, 1942, praying for an amendment to said Order of October 23, 1942, and the Company admits that said petition was denied by the Commission by its Order No. 2418, dated November 9, 1942.

6. The Company admits the averment that the Petitioner filed a petition for reconsideration with said Commission on November 12, 1942, and admits that said petition was denied by the Commission by Order No. 2422, dated November 16, 1942.

7. The Company denies each and every averment set forth in paragraph 1 of the petition, including subparagraphs a, b, and c thereof.

8. The Company denies each and every averment set forth in subparagraphs a, b, and c of paragraph 2 of the Petition.

9. The Company denies the averment set forth in subparagraph d of said paragraph 2, that said decision and order of October 13, 1942 was entered without opportunity of intervention by the Petitioner, and the Company admits the remaining averments of said subparagraph d.

10. The Company denies each and every averment set forth in the last unnumbered paragraph of the Petition, except that the Company states that it is without knowledge

or information sufficient to form a belief as to the purpose of the appeal.

11. And for further answer to said Petition the Company respectfully avers as follows:

161 That on March 20, 1942, pursuant to the provisions of its Order of December 13, 1935 (Order No. 1458) the Public Utilities Commission of the District of Columbia ordered that an engineering and accounting investigation be made relative to the rates, tolls, charges, etc., of the Company to be effective for the rate year beginning September 1, 1942, and gave public notice of its intention to hold a public hearing on the subject matter of the investigation. On July 21, 1942 said Commission gave public notice that it would hold a formal public hearing on August 18, 1942 relative to the rates, tolls, charges, etc., of the Company to become effective September 1, 1942 in accordance with the sliding scale arrangement established by Order No. 1458. On July 29, 1942 the Commission gave public notice that a prehearing conference would be held August 11, 1942 preparatory to the hearing set, as aforesaid, for August 18, 1942. On August 14, 1942 the prehearing conference was held, and was attended by members of the Commission, representatives of the staff of the Commission, representatives of the Company, and Utilities Counsel of the Office of the Price Administration. On August 18, 1942 the aforesaid hearing, being the annual hearing for rates of the Company, set under the sliding scale arrangement, began before the Commission. The Utilities Counsel of the Office of Price Administration entered his appearance and filed a petition of the Price Administrator for leave to intervene. The Emergency Price Control Act of 1942, approved January 30, 1942, provides: "That nothing in this Act shall be construed to authorize the regulation of * * * rates charged by any common carrier or other public utility * * * (Sec. 302(c)). That provision remains in the statute to this day, being unchanged by the amendatory Act of October 2, 1942, hereinafter mentioned.

The Office of Price Administration was created by the Emergency Price Control Act of 1942, and the authority, duties, and functions of said Office and of the Price Administrator are defined and limited thereby. Nevertheless, the Company interposed no objection to the intervention of the Price Administrator, and the petition was forthwith granted by the Commission. Thereafter, the hearing con-
162 tinued on August 19, September 4, September 8, September 11, and September 14, the postponements to September 4, to September 11, and to September 14 being granted at the request of Utilities Counsel of the Office of Price Administration. During the course of the hearing, said Utilities Counsel cross-examined witnesses, presented testimony both oral and written, and made numerous arguments. Said Utilities Counsel from time to time requested and moved the Commission to enlarge and change the issues in the proceeding as defined by the Commission, and to proceed to re-examine the Order of the Commission of December 13, 1935 (Order No. 1458), all of which requests and motions were denied by the Commission. Except that testimony and argument of all parties, including the intervening Office of Price Administration, were limited to the issues in the proceeding as defined by the Commission, no other limitation or restriction whatsoever was imposed at any time upon the Price Administrator or its counsel.

Upon the conclusion of the hearing on September 14, all parties, including the Price Administrator, were given until September 25 for the filing of briefs. On September 25, the Utilities Counsel of the Office of Price Administration filed a brief on behalf of the Price Administrator and the Office of Price Administration.

On September 24, the Fort Davis Citizens' Association and the Washington League of Women Shoppers filed petitions for reopening of the case, and on September 28, the Office of Price Administration, through its aforesaid Utilities Counsel, filed a petition that the case be reopened. The Commission ordered that the case be reopened, and the re-

opened hearing was held, pursuant to notice, on September 30. On that date the Utilities Counsel of the Office of Price Administration filed a supplemental brief on behalf of the Price Administrator and the Office of Price Administration. Thereupon the hearing was concluded, and the matter taken under advisement by the Commission.

On October 2, 1942 the President approved the amendment to the Emergency Price Control Act of 1942, which provided in part as follows:

163 "Provided, That no common carrier or other public utility shall make any general increases in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

On October 13, 1942, the Commission issued its opinion and Order, No. 2401, in Formal Case No. 316, prescribing schedules of increased rates, tolls, and charges to be charged by the Company for gas service in the District of Columbia. In said Order the Commission stated that, under the terms of the sliding scale arrangement (Order No. 1458), the rates, tolls, charges, rules, regulations, and conditions of service prescribed in said Order (No. 2401) became effective as of September 1, 1942, but also directed the attention of the Company to the above quoted provision of the Act of October 2, 1942.

Pursuant to the provisions of the Act of October 2, 1942, on October 15, the Company notified the Director of Economic Stabilization of the increase in rates and charges of the Company. By Directive No. 1, the Director of Economic Stabilization designated the Price Administrator of the Office of Price Administration as his representative to receive notices of increases in common carrier or other public utility rates, and charges, and to intervene and participate

in proceedings before Federal, state, and municipal authorities. On October 19, 1942, Utilities Counsel (the same person who had participated in the hearings before the Commission), for the Price Administrator of the Office of Price Administration, already, as above-shown, a party intervener in the proceeding, now acting on behalf of the Director of Economic Stabilization, filed a petition with the Commission praying that Order No. 2401, dated October 13, 1942, be vacated, that the proceeding be reopened for the purpose of receiving further evidence and hearing further argument, and that the petitioner be allowed to intervene and file a brief in the reopened proceedings. By its Order No. 2404, dated October 23, 1942, the Commission ordered that the record in the case be reopened for the purpose of
164 receiving from the Office of Price Administration, on behalf of the Director of Economic Stabilization, additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and granted intervention for such purpose. The reopened proceedings were set for formal hearing on November 2. On October 30, by letter addressed to the Commission, the Company consented to the intervention of the Office of Price Administration on behalf of the Director of Economic Stabilization.

On October 31, Utilities Counsel for the Price Administrator of the Office of Price Administration, acting on behalf of the Director of Economic Stabilization, filed a petition with the Commission for an amendment to Order No. 2404, dated October 23, 1942, and for a stay of Order No. 2401, dated October 13, 1942, alleging that said Order No. 2404 illegally restricted the right of intervention by the Director of Economic Stabilization. The hearing was reopened on November 2, and Utilities Counsel for the Price Administrator was given the opportunity of adducing evidence. He insisted that the Commission first rule on the petition filed on October 31, which the Commission did, denying the petition. Utilities Counsel for the Price Administrator then

admitted that he was not prepared to present evidence and asked that he be given a reasonable opportunity to determine the future course of the Price Administrator with respect to the proceeding. The Commission granted his request and adjourned the hearing until November 4. On that day Utilities Counsel for the Price Administrator conducted some further cross-examination of one witness for the Company, and called the Chief Accountant of the Commission as a witness, but offered no further evidence. Thereupon, on November 4, 1942, the hearing was closed.

Repeatedly, throughout the hearing the Commission, through its Chairman, stated its desire to receive testimony from the Office of Price Administration concerning the policies and program of the Federal government and the relation of such policies and program to the issues in the proceeding; for example, on September 8 before Utilities Counsel of the Office of Price Administration had completed his cross-examination of the first witness presented by
165 the Company, the Chairman of the Commission stated:

(Record 476) "This Commission will be glad to have testimony regarding the aims and purposes of the Office of Price Administration during this period of national emergency, and we are very much interested in learning the attitude of the Office of Price Administration as to the relation of those aims and purposes to the present proceeding."

Similar examples appear on pages 477, 481, 490, 848, 850, 851, 853, and 1148. At the conclusion of the hearing Utilities Counsel stated that

"We think the record is clear now that the Commission's Order is inflationary in character." (Record 1144),

and again stated, referring to his summation,

"I will rest upon this statement." (Record 1148)

On November 9 the Commission issued its Order No. 2418, denying the petition of the Price Administrator of the Office

of Price Administration on behalf of the Director of Economic Stabilization, that Order No. 2401 be vacated.

On November 12 the Price Administrator filed with the Commission two petitions for reconsideration of the Commission's Order No. 2401, one on behlaf of the Director of Economic Stabilization and one on behalf of the Office of Price Administration. The petitions were denied by the Commission on November 16, by Orders Nos. 2422 and 2423, respectively.

On November 16, 1942, the expiration date of the 30 days' notice given by the Company to the Director of Economic Stabilization in accordance with the provisions of the Act of October 2, 1942, the Company put into effect the rate schedules prescribed by Order No. 2401, dated October 13, 1942.

Accordingly, the Company avers that Petitioner was accorded full intervention as contemplated by the Act of October 2, 1942, amending the Emergency Price Control Act of 1942, in the proceedings conducted by the Commission
166 in Formal Case No. 316; that at no time did the Commission unlawfully or improperly restrict the rights given the Petitioner by said Act of October 2, 1942 or by Executive Order No. 9250; that Petitioner had adequate and ample opportunity to present to the Commission the program of the Federal Government to control inflation and stabilize the cost of living; that the decision and order of the Commission of October 13, 1942 is legal and valid in all respects; that said decision and order were entered by the Commission after giving full consideration and effect to the program of the Federal Government, as presented to the Commission by Utilities Counsel of the Office of Price Administration, as fully set forth in the findings and opinion promulgated by the Commission at the time of entering said decision and order of October 13, 1942.

And having completely answered the averments set forth in said Petition of Appeal, the Company respectfully prays that said Petition be dismissed.

The Company moves the Court to dismiss this Appeal for the reasons (1) that Petitioner is not a proper appellant, and (2)that the appeal is without merit.

* * * * * * * * * * *

167 Endorsed: Filed Feb 1 1943 Charles E. Stewart, Clerk

Memorandum

This proceeding arises out of the entry of an order by the District of Columbia Public Utilities Commission on October 13, 1942 in which it granted the right of the Washington Gas Light Company, a public utility rendering gas service in the District of Columbia, to a rate increase applicable to the customers of that company.

An appeal is taken by the Office of Price Administration from that order and a like appeal is taken by the Director of Economic Stabilization from that order and a subsequent order entered on October 23, which denied the right of the Price Administrator on behalf of the Director of Economic Stabilization to intervene in that proceeding in accordance with the provisions of an act of Congress approved October 2, 1942.

168 On March 20, 1942 the Public Utilities Commission entered an order setting for hearing and investigation the rates of the Washington Gas Light Company. The order provided as follows: "That an engineering and accounting investigation be made relative to the rates, tolls, charges and tariffs and rules and regulations and conditions of service of the Washington Gas Light Company, including an investigation in conformity with the sliding scale arrangement.

The sliding scale arrangement which was referred to by the Commission in its order of March 20, 1942, was entered into by the Commission on December 13, 1935. It appears that in 1935 the Commission was engaged in an investigation of the rates and valuation of the property of the Washington Gas Light Company. Following that investigation

the Commission, after hearing, entered into what is known as the sliding scale arrangement pursuant to the provisions of paragraph 18 of the Public Utilities Act of the District of Columbia.

That arrangement provided for a rate base of the property of the company; it provided for the determination of depreciation expense; it provided for a basic return of six and one-half per cent; it provided for a certain formula and certain principles for the annual determination of rates following the entry of this sliding scale arrangement. It provided also that if the net earnings of the company were to exceed six and one-half per cent, then the excess earnings should be divided between the customers and the company in the form of a rate reduction. It provided also that if the earnings of the company were lower than six and one-half per cent, under certain conditions there should be a rate increase to the company.

It was under the provisions of this sliding scale arrangement which the Commission entered its order of
169 March 20, 1942, providing for the fixing of rates of the Washington Gas Light Company for the year beginning September 1, 1942. Following the issuance of this order of March 20, certain investigations were made in accordance with the sliding scale arrangement by the Commission's accountants and engineers. On August 14, 1942, a pre-hearing conference was held, to which the Utilities Counsel for the Office of Price Administration was invited and appeared. Subsequently, the Commission went forward with the formal hearings on this matter, on August 18, at which time a petition for intervention in that proceeding was filed by the Office of Price Administration and was granted.

That petition sets forth the very grave responsibilities of the Office of Price Administration in connection with the stabilization of prices and for the elimination of price increases under public law No. 421, which was the first emergency price control act of 1942; it pointed out that pursuant

to the provisions of that statute, steps had been taken by the Office of Price Administration to stabilize nearly all commodity prices to the extent to which they were within the jurisdiction of the Office of Price Administration.

It also pointed out that payment for gas service constituted a regular item in the cost of living and that this was the first time since the nation had entered into the war and since we had been involved in this great emergency that the Commission was proceeding to fix rates pursuant to this formula which had been entered into in 1935 under economic conditions which were totally different from the conditions at the time the Commission began to consider the question as to what shall be the fair and reasonable rates of the Company.

The Commission was requested to reconsider the basic principle of the sliding scale arrangement in the light
170 of the Government's program to prevent increases in the cost of living and to stabilize prices.

The Price Administrator claims that notwithstanding he was permitted to intervene the Commission nullified the permission by refusing to reconsider the basic principles of the sliding scale arrangement in the light of the economic conditions and the Government's program to prevent inflation. Appellants contend that by its rulings and pronouncements it limited its consideration to such data as would enable it to apply the formula of the sliding scale arrangement in determining what rates were authorized by the sliding scale arrangement.

Appellants complain that the Commission narrowly considered the matter of rates within the limits of the sliding scale arrangement and refused to broaden the scope of its inquiry to determine whether the formula of the sliding scale could be properly applied in the light of known economic conditions and the Government's program to prevent increases in the cost of living . It is said for the Commission that the order of March 20, 1942 provided only for the engineering and accounting investigation necessary to con-

form with the sliding scale arrangement and that it was not required at the instance of appellants to broaden the scope of its inquiry beyond the purpose indicated in the order of March 20, 1942.

The amendment of October 2, 1942 to the Emergency Price Control Act of 1942 provided in part "That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

171 I think the Commission erred in its belief that it could proceed in accordance with the 1935 sliding scale arrangement alone and in the face of the Congressional Act of October 2, 1942.

The act of October 2, 1942 required that the Commission give the President's representative a reasonable opportunity to present his case that the Commission might determine whether the formula agreed upon in the sliding scale arrangement was inflationary, under present known conditions.

The record does not show that such opportunity was afforded: accordingly the case is returned to the Commission with direction that an inquiry be made to determine whether an application of the sliding scale formula is inflationary in view of the changed economic and war conditions.

True, some of the evidence offered by appellants to broaden the scope of inquiry was received. I think upon the record it is clear that the Commission regarded the inquiry within narrow limits and within the scope of the order of March 20, as interpreted by the Commission and that the Commission closed its ears to the insistant demand of appellants to give consideration to the new factors required by the act of October 2, 1942. In that respect I find that the the action of the Commission was arbitrary and illegal.

The right conferred upon the President and his representatives was not a mere formality. The privilege of intervention is one of substance and has direct relation to the avowed purpose of Congress to stabilize prices, wages and profits.

It is not so much a question as to whether the Commission should enlarge or broaden the scope of its hearing under the order of March 20 as what it should do to fix reasonable and just rates as required by the act of October 2, 1942 which seeks to prevent inflation. Such question may not be dismissed but must be met and the only way to meet it is to hear fully such evidence as the President's
172 representatives may produce and otherwise make a searching investigation in the light of present economic and war conditions to determine whether the proposed increase in rates will be inflationary in character and so contrary to the declared policy of Congress.

The sliding scale arrangement is not a contract, certainly not one which binds the public. It must give way to public policy and to Congressional enactment which expresses that policy. The Commission in good faith has sought to fulfill its obligations under the sliding scale arrangement but may have lost sight of the check upon it which has been voiced by Congress. I am not unmindful that the effort and the cost in bringing about the sliding scale arrangement was very great. I think it was the result of fair and honest judgment and has been found to be a good workable and economical plan, but it must now be subjected to a test not previously required.

In returning the case to the Commission it is with the direction that they afford the President's representatives the opportunity to fully test the inflationary trend, if any, which the proposed increase in rates may portend, and that the Commission cooperate therein. In so returning the case I indulge the hope that needless expense will be spared and that the question of the inflationary effect of the proposed increase will be fairly met. Any arrangement before Octo-

ber 2, 1942 lacks public approval and must give way to Congressional edict. The basic principles of the arrangement and other factors which inhere in the question of inflation and of fairness and justice are open for determination.

The appeal is sustained and the Commission's order will be vacated. This memorandum may serve as a statement of my reasons for such action. If additional reasons are considered to be necessary they may be suggested. Let appellants present an appropriate form for final order.

F. DICKINSON LETTS,
Justice

173 Endorsed: Filed Feb 10 1943 Charles E. Stewart, Clerk

Order

This cause coming on to be heard on the appeals of James F. Byrnes, Director of Economic Stabilization, and Prentiss M. Brown, Price Administrator of the Office of Price Administration, and oral arguments having been heard and briefs filed, and for the reasons set forth in a memorandum filed herein by the Court, the Court having determined that the appeal in this cause should be sustained and the Commission's order and decision #2401 should be vacated, it is hereby ordered, adjudged, and decreed:

That Order #2401 of October 13, 1942, by the District of Columbia Public Utilities Commission whereby the Washington Gas Light Company was authorized to increase rates or charges for gas service rendered in the District of Columbia be and it hereby is vacated.

Issued at the City of Washington, D. C., on the 10th day of February, 1943.

F. DICKINSON LETTS,
Justice.

180 Endorsed: Filed Mar 3 1943 Charles E. Stewart, Clerk.

Motion for Reargument and Reconsideration.

Comes now the Washington Gas Light Company, party appellee herein, by its counsel, and moves the Court that its order of February 10, 1943, be vacated, that its Memorandum of February 1, 1943, be rescinded, that the case be set for reargument and that the Court reconsider the issues involved; and further requests that the Court request the United States Court of Appeals for the District of Columbia for permission to consider and act upon the foregoing motion. As reasons for its motion and request, the Company states as follows:

Upon the filing of their petition of appeal by the parties appellant herein, the Public Utilities Commission of the District of Columbia, pursuant to the statute, certified to this Court the record in the proceeding before it, including a transcript of the testimony, the originals of all ex-
181 hibits and copies of all pleadings and orders. On December 8, 1942, this record, bound in a package, was filed with the Clerk of this Court and, in due course was transmitted to the File Room of the Clerk's Office, where an erroneous case number was inadvertently put upon the package and the package was put on a shelf under the erroneous number. The learned Justice who heard and decided the case was not made aware of the existence of the record before the Commission, did not see that record or consider it during his consideration of the case prior to the promulgation of his memorandum of decision on February 1, 1943, or prior to the entry of the order of February 10, 1943, or until February 16, 1943.

183 Endorsed: Filed Mar 3 1943 Charles E. Stewart, Clerk

Affidavit

DISTRICT OF COLUMBIA) *ss:*

E. Barrett Prettyman, being duly sworn, deposes and says that he is attorney of record for Appellee in the cases of Byrnes, et al., vs. Flanagan, et al., Nos. 17805 and 17806; that on February 17, 1943, he at the request of the Judge of this Court who had heard and decided the case, appeared with other counsel for the several parties before the Judge and he informed them that his attention had been called to the fact that the record in said proceedings, as certified to the Court from the Public Utilities Commission of the District of Columbia, had been misfiled and had not been previously before him, and he now had on his desk a bundle of papers which purported to be the lost record; that he thereupon opened said papers to determine whether they were the lost record and found that they were; that the Judge stated that this record (being the record certified to the Court by the Public Utilities Commission) had not been before him prior to this date, i.e., February 17, 1943.

E. BARRETT PRETTYMAN.

Subscribed and sworn to before me this 3rd day of March, 1943.

FLORA A. MYERS,

(Seal) *Notary Public.*

184 Endorsed: Filed Mar 3 1943 Charles E. Stewart, Clerk.

DISTRICT OF COLUMBIA) *ss:*

Raymond Sparks, being duly sworn, deposes and says that he is a member of the bar of the District Court of the United States for the District of Columbia and a member of the firm of Hewes, Prettyman and Awalt, engaged in the general practice of law in the District of Columbia and attorneys for the Washington Gas Light Company, party appellee in Byrnes, et al, vs. Flanagan, et al, Nos. 17805 and 17806; that after the entry by the District Court of its

order in that proceeding on February 10, 1943, and after the perfecting of the appeal from that order on February 12, 1943, he began the several steps necessary to be taken by counsel for the transmission of the record to the Court of Appeals; that neither he nor the Clerk of the Court could find the record of the proceeding before the Commission; that upon inquiry he learned that this record had been duly prepared by the Chief Clerk to the Public Utilities Commission, certified by the Commission, transmitted to the Clerk of this Court and directed to be placed in the File Room of the Clerk's Office.

That with his partner, E. Barrett Prettyman, he called upon the Judge of this Court who had heard and decided the case, to seek his assistance in locating the missing record; that they were informed by the Judge that he had never seen the record, either at the time of trial or thereafter, and that he was not aware of the existence of any such record.

That thereafter a search was made, with the assistance of the attendants in the File Room of the Office of the Clerk of the Court, and the record which had been certified by the Public Utilities Commission was found in a package upon which an erroneous case number had been placed, that is, the number "13108" was on the package instead of
185 "17805" or "17806"; that he was informed by these attendants that the package had not left their custody since being filed, and that it would not have been sent to the Court upon request for the file in the name or number of this proceeding.

That thereafter counsel for all parties appeared before the Judge who had heard and decided the case, and he was informed of the circumstances.

RAYMOND SPARKS.

Subscribed and sworn to before me this 1st day of March, 1943.

FLORA A. MYERS,
(Seal) *Notary Public*, D. C.

186 Endorsed: Filed Mar 8 1943 Charles E. Stewart, Clerk.

Answer to Motion for Reargument and Reconsideration

In opposition to the Motion for Reargument and Reconsideration of the order of the Court of February 10, 1943, filed by the appellee Washington Gas Light Company, the appellants, James F. Byrnes and Prentiss M. Brown, respectfully submit that:

1. All relevant portions of the record before the Commission were in fact before the Judge of the Court who decided the case and were in the pleadings, in the argument and in the briefs filed with the Judge of the Court, all of which is more fully set forth in the affidavit of Harry R. Booth, filed herewith.

2. The issues decided by the Court in these proceedings were essentially legal issues; i.e., whether the Commission gave due and proper consideration to the Act of October 2, 1942, amending the Emergency Price Control Act of
187 1942, and the rights and privileges of the appellants thereunder, in entering its order of October 13, 1942, and deciding the matter primarily according to provisions of the sliding-scale arrangement.

3. Counsel for the Washington Gas Light Company and the Commission, appellees, conceded and insisted that the Commission was compelled to decide the matter before it according to the provisions of the sliding-scale arrangement.

4. The testimony before the Commission was irrelevant to the issues in these proceedings and consideration and examination thereof was unnecessary to the determination of such issues, since the primary question before the Court concerned the actions of the Commission as reflected in its orders, motions, and rulings, all of which were related in the pleadings which were before the Court and which were discussed in argument.

5. A request for reconsideration has been previously presented to the Judge of the Court who heard and decided

these cases. Memoranda have been filed with said Judge by appellants and appellees, and the said Judge has apparently determined that every essential and important fact bearing upon the Commission's conduct of its proceeding and its ultimate orders was before the Court and was considered by the Court in the deliberations which culminated in the order of February 10, 1943.

6. A full and fair hearing was accorded appellees by the Court.

Wherefore, appellants pray that the motion of appellees be denied.

Respectfully submitted,

JAMES F. BYRNES,
Director of Economic Stabilization.

By PRENTISS M. BROWN,
Price Administrator of the Office of Price Administration.

DAVID GINSBURG,
General Counsel—F. O. B. #1

HARRY R. BOOTH,
Utilities Counsel—F. O. B. #1
Legal Division,
Office of Price Administration.

188 *Affidavit*

DISTRICT OF COLUMBIA) *ss:*

Harry R. Booth, being duly sworn, deposes and says that he is an attorney of record for appellants in the cases of Byrnes, et al., v. Flanagan, et al., Nos. 17805 and 17806; that he has examined the motion for reargument and reconsideration, and the affidavits of affiants E. Barrett Prettyman and Raymond Sparks; and in answer thereto further deposes and says:

1. That, at the time of rendering his opinion in these causes, the Court had before it all relevant portions of the record before the Commission, and that the testimony was reviewed by counsel for appellants and appellees in oral argument and in briefs.

2. That the Judge of the Court who heard and decided the cases before him the following documents, in addition to the detailed answers filed by appellees:

(a) The petition of appeal in the Byrnes case, No. 17805, and the following documents, which were attached to and made a part thereof:

I. The Public Utilities Commission's order of October 13, 1942 (Exhibit A) including the dissenting opinion of Commissioner Hankin;

II. The petition of appellant, dated October 19, 1942, praying that the order of October 13, 1942, be vacated, (Exhibit B);

III. The order of the Commission of October 23, 1942, denying such petition (Exhibit C), including Commissioner Hankin's dissenting opinion;

IV. The petition of appellant, dated October 31, 1942, praying for the amendment of the Commission's Order of October 23, 1942 (Exhibit D);

V. The Commission's order of November 9, 1942, denying the petition of October 31, 1942 (Exhibit E), including Commissioner Hankin's dissenting opinion;

189 VI. The petition for reconsideration filed by appellant on November 12, 1942 (Exhibit F);

VII. The order of the Commission dated November 16, 1942, denying the petition for reconsideration (Exhibit G).

(b) The petition for appeal in the Henderson Case, No. 17806, and the following documents which were attached to and made a part thereof:

I. The Commission's order of October 13, 1942, (Exhibit A), including the dissenting opinion of Commissioner Hankin;

II. The intervening petition of appellant, dated August 18, 1942 (Exhibit B);

III. The petition of appellant for reopening of the proceeding, dated September 28, 1942 (Exhibit C). (This was denied by the Commission on September 30, 1942).

IV. The petition for reconsideration filed by appellant on November 12, 1942 (Exhibit D);

V. The order of the Commission, dated November 16, 1942, denying the petition for reconsideration (Exhibit E).

(c) The answers to the appeals filed by the Washington Gas Light Company which not only set forth in considerable detail the facts relied upon by them to justify the Commission's order of October 13, 1942, in the light of the Government's price program and the Act of October 2, 1942, but also contained the following documents:

I. The Commission's order of October 13, 1942.

(d) The answer filed by the Commission to the Henderson appeal, No. 17806, which not only set forth in considerable detail the facts of the case relied upon by it to justify the Commission's order of October 13, 1942, in the light of the Government's price program and the Act of October 2, 1942, but also contained the following documents:

I. The Commission's order of March 19, 1935, in the so-called Washington Gas Light valuation case (Exhibit A);

II. The Commission's valuation order in the Georgetown Gas Light Company case, dated March 19, 1935 (Exhibit B);

III. The Commission's order of December 13, 1935, approving the sliding-scale arrangement (Exhibit C);

IV. The Commission's order of March 20, 1942, initiating this proceeding (Exhibit D);

V. The Commission's order of July 21, 1942, giving notice of hearing of this proceeding (Exhibit E).

190 3. That the appeals were argued before the said Judge of this Court for two days, to wit on December 22 and 23, 1942, and that counsel for appellants and appellees were given every opportunity to and did present and summarize the essential points of the record before the Commission necessary to a determination of the appeals. That during such arguments counsel for appellees conceded that the Commission was compelled to decide the case ac-

cording to the basic provisions of the sliding scale arrangement. That at page 132, 134 and 135 of the transcript of said argument, Corporation Counsel Keech speaking asserted:

(Page 132) "A consideration of that order would be totally inadequate unless this Court had before it, as our answer does place before you, the history leading up to the sliding scale arrangement . . . Turning again to the present order, of course the Commission can modify the sliding scale arrangement, under the determination of this Court, provided it gives timely notice (134) . . . With that state of the record it would therefore seem that the Commission was, of necessity, bound, if any change were to be made, to give timely notice. And, furthermore, to give, and have before it before making the change, facts upon which such a change could be made." (136)

And at page 151-152 Mr. Keech said:

"What they wanted to have was a hearing in which all factors could be determined. Of course, that embraced valuation, rates, depreciation, and everything else. That was not within the scope of the hearing. It was not intended by the Act."

And counsel for the company, Mr. Stevens, asserted at page 247:

"I wish to address myself for a very few minutes to the proposition that were the Court to set aside this order of the Commission it would level a deadly and staggering blow at the administration of public utility rates in the District of Columbia under the sliding scale arrangement which is authorized by paragraph 18 of the Public Utilities Act."

4. That subsequently counsel for appellees and appellants filed briefs with the Court.

5. That, after the said Judge of the Court discovered that he did not have the record before him as certified by
191 the Commission, counsel for the appellee, Washing-

ton Gas Light Company prepared and submitted a further brief to the Court pointing out such parts of the testimony upon which they relied for the purpose of having said Court vacate its decree of February 10, 1943.

HARRY R. BOOTH.

Subscribed and sworn to before me this 8th day of March, 1943.

My comm. exp. 11-15-47.

MARIETTA L. ENGOR,
(Seal) *Notary Public.*

* * * * * * * * * * *

192 Endorsed: Filed Mar 12 1943 Charles E. Stewart, Clerk.

Memorandum

It is with some chagrin that I admit the certified record of the proceedings of the Public Utilities Commission was not physically brought to my attention upon the appeal. Let me say I gave it no importance for I realized that all contending parties were in possession of copies thereof and quoted extensively therefrom in their oral arguments and written briefs. It did not occur to me that either the Commission or the Utility had failed in any way to present fully their views upon the appeal. I did learn when the record for appeal was being prepared that the certified record had not been formally brought to my attention. In some way which remains unexplained the record certified by
193 Commission had been placed in the file room of the clerk commingled with some of the papers in a patent case and wrapped in a bundle carrying the number of the patent case. When this came to my attention through one of the attorneys for the Utility I had the record sent to my chambers and summoned all counsel concerned in the appeal and explained to them what had happened. It was suggested and I believed that I should examine the record and determine whether upon its consideration I should wish to

adhere to my findings and judgment or might find it in the interest of justice to alter, amend or set aside the judgment which had been entered. In that informal conference it was uniformally agreed that it would be appropriate for me to read and consider the certified record of the Commission and determine what I should do in the discharge of my judicial duty with respect to the findings and the judgment which had been entered. Thereafter and promptly counsel for the Utility and for the appellants furnished me with memoranda suggesting such parts of the record as were regarded as important to a decision of the issues of the case.

At about this juncture counsel for the Commission suggested that in view of the appeal which had been noted, I had lost control of my judgment record and that anything which I might wish to do about it would be futile and of no lawful effect. Counsel for the Utility was inclined to agree with this contention. Nevertheless I thought I should know whether the certified record supported or in any way contradicted or disproved any of the essential elements of the case as shown in the pleadings, the oral arguments and written briefs of counsel. Having so determined upon my course I read with care and precision the certified record of the Commission. It took me three days, including a Saturday, a Sunday and Washington's birthday to do it. I did not limit my reading to parts pointed out by
194 counsel, but perused the entire record with its exhibits.

When I had so read the certified record I was fully convinced that counsel for the contending parties had fully and faithfully presented to me in their oral arguments and briefs all facts and matters pertinent to this appeal which appear upon such certified record. The court was in no wise misled nor confused as to what had occurred in the hearing before the Commission. As to the essential facts there was no disagreement. The issue was one of law relating to admitted facts.

The certified record fully supports my findings of fact and I continue to believe such findings justify my conclusions of law and definitely require the judgment which was entered.

I conclude that it was not a matter of inadvertence on the part of any contending party that the certified record of the Commission was not formally and physically presented at the trial. Although the oral argument consumed two trial days no one present and of counsel considered it necessary or important to show the proceedings before the Commission except in the manner which resulted from the deliberate choice of counsel. They were fully justified in this, since the certified record adds nothing to the presentation made by counsel at the trial.

The motion for reargument and reconsideration is regarded as informal and yet for the purpose of the record it will be appropriate that appellants present a suitable order overruling same.

F. DICKINSON LETTS
Justice.

195 Endorsed: Filed Mar 16 1943 Charles E. Stewart, Clerk.

Order

This cause coming on to be heard on the appeals of James F. Byrnes, Director of Economic Stabilization, and Prentiss M. Brown, Administrator of the Office of Price Administration, from an order entered on October 13, 1942, by the Public Utilities Commission of the District of Columbia authorizing an increase in rates for gas supplied by the Washington Gas Light Company, this Court on February 1, 1943, having entered a memorandum setting forth its reasons why the appeal should be sustained and on February 10, 1943, having entered an order sustaining said appeal and vacating said order of October 13, 1942, of the District of Columbia Public Utilities Commission, and on the 12th day of February, 1943, having stayed said judgment pending appeal to the United States Court of Appeals

for the District of Columbia, a notice of appeal to
196 said Court of Appeals having been filed by the Company and the Commission, and a motion having been made herein on behalf of the Company addressed to this Court asking that the case be set for reargument and that the Court reconsider the issues involved and further asking this Court to request the United States Court of Appeals for the District of Columbia for permission to consider and act upon said motion, and the Court having considered said motion of appellee for reconsideration and reargument, and on March 12, 1943, having entered a memorandum setting forth his reasons why said motion should be denied, the Court hereby finds:

1. That all essential parts of the record before the Commission were contained in the pleadings, answers, orders, argument, and briefs submitted to the Court prior to his memorandum dated February 1, 1943, and decree dated February 10, 1943:

2. That a review of the transcript of the testimony before the Commission demonstrates that there were no matters of consequence bearing on the issues in this case not previously called to the attention of the Court;

3. That the appellee, Washington Gas Light Company, has failed to demonstrate any good or sufficient cause for the granting of its motion;

4. That a full and fair hearing has been granted to all parties before this Court.

Now, therefore, it is hereby ordered that the motion for reargument and reconsideration on behalf of the company be and the same hereby is denied.

F. DICKINSON LETTS
Justice

203 Public Utilities Commission of the
District of Columbia

Order No. 2219.

March 20, 1942.

In the Matter of Investigation of rates, tolls, charges, tariffs, rules, regulations and conditions of service of the WASHINGTON GAS LIGHT COMPANY. P. U. C. No. 3305, Formal Case No. 316.

By the Commission: A sliding scale arrangement for fixing rates of the Washington Gas Light Company was established by Order No. 1458 of the Commission (Findings Nos. 1 and 2). Under the arrangement rates are to be adjusted as of September 1st of each year.

It Is Ordered:

Section 1. That an engineering and accounting investigation be made relative to the rates, tolls, charges, tariffs, rules, regulations and conditions of service of the Washington Gas Light Company, including an investigation in conformity with the sliding scale arrangement.

Section 2. Notice is hereby given of the intention of the Commission to hold a public hearing on the subject matter of the investigations.

A True Copy: By the Commission:

E. J. MILLIGAN
Executive Secretary.

N. H. HETZEL
Chief Clerk.
GC

205 Public Utilities Commission of the
District of Columbia
Washington

July 21, 1942

In the Matter of Investigation of rates, tolls, charges tariffs, rules, regulations and conditions of service of the WASHINGTON GAS LIGHT COMPANY. P. U. C. No. 3305, Formal Case No. 316.

Notice of Hearing

Notice is hereby given that the Public Utilities Commission of the District of Columbia will hold a formal public hearing on Tuesday, August 18, 1942, at 10:00 a. m., in Room 500, District Building, relative to the rates, tolls, charges, tariffs, rules, regulations, and conditions of service of the Washington Gas Light Company, to become effective September 1, 1942, in accordance with the sliding scale arrangement established by Order No. 1458.

A True Copy: By direction of the Commission:

E. J. MILLIGAN,
Executive Secretary.

N. H. HETZEL
Chief Clerk.

207 *Petition For Leave To Intervene*

May It Please The Commission:

Leon Henderson, Price Administrator for the Office of Price Administration, respectfully petitions for leave to intervene, and in support thereof, makes the following representations:

1. Petitioner is Price Administrator of the United States, and Administrative Officer of the Federal Government, with offices in Washington, D. C. This office was created by the Emergency Price Control Act of 1942 (Pub. L. 421, 77th Cong.,) for the purpose, among others, of:

(a) Stabilizing prices and preventing speculative unwarranted and abnormal increases in prices,

(b) Eliminating and preventing profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions and scarcities caused by or contributing to the national emergency.

(c) Assuring that defense appropriations are not dissipated by excessive prices.

(d) Protecting persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent upon life insurance, annuities and pensions, from undue impairment of their standard of living; and

(e) Preventing a post-emergency collapse of values.

(Section 1(a) of the Emergency Price Control Act of 1942)

2. The program of the Office of Price Administration to stabilize commodity prices and costs of living is essential to the success of the war effort.

3. In accordance with the purposes of the Emergency Price Control Act, the Office of Price Administration has undertaken to stabilize commodity prices and the cost of living throughout the country by a series of Maxi-
208 mum Price Regulations. Indeed, general price increases have appeared to be such a grave threat to the efficient production of war materials and to the stability of the national income, that the Office of Price Administration, within the limits of statuory authorization has established maximum selling prices for all commodities and services. The immediate purpose of such regulation is to guarantee to the American people that every living cost will remain stable, and that the cycle of increasing prices, increasing wages, leading to disastrous inflation, may be averted. That is a prerequisite to the further measures which are necessary to insure war-time stability in the economy. Stable living cost means stability in the real wages of the worker. Increases in the cost of living bring about the need for a constant revision of wage contracts, constant bargaining and negotiations, and the certain pro-

spect of interrupted production; normal collective bargaining processes are strained, perhaps broken, and war production is threatened with being shackled, disrupted, or even paralyzed.

4. Washington Gas Light Company (hereinafter sometimes referred to as the Company) is a public utility engaged in the business of supplying gas service to domestic, commercial, and industrial consumers in the District of Columbia at rates and charges which are subject to the jurisdiction of the Public Utilities Commission of the District of Columbia (hereinafter sometimes referred to as the Commission.

5. It appears that payments for gas service represent a regular item in the cost of living of a vast majority of residents in the District of Columbia.

6. By its order of December 13, 1935, the Commission established a sliding-scale arrangement for determining the rates and charges which the Company shall be allowed to demand and collect for supplying such gas service

7. Pursuant to the provisions of said sliding-scale arrangement the Commission has entered upon an investigation for the purpose of determining, among other things, the amount to be applied for the decrease or increase of rates during the "Rate Year" commencing September 1, 1942, and has directed that a hearing be held thereon commencing August 18, 1942.

8. Washington Gas Light Company contends that its net earnings during the fiscal year (Test Year) ended June 30, 1942, were approximately $464,000 less than it was entitled to earn under the provisions of said sliding-scale arrangement. It, therefore, seeks to have an increase of
209 approximately $387,122 applied during the "Rate Year" commencing September 1, 1942, and requests that its schedule of rates be adjusted accordingly.

9. It is contended by the Company that according to the provisions of said sliding-scale arrangement of December 13, 1935, the Company is entitled to such increase in rates and charges to compensate it for the difference between the

actual return earned during the last fiscal (Test) year and the return which it was permitted to earn under the arrangement.

10. It appears that the claimed deficit in earnings during the past fiscal year is predicated in large part upon alleged estimated increases in federal income taxes levied or to be levied upon income received in the period from July 1, 1941, to June 30, 1942, over the preceding year.

11. The approval of an increase in utility rates because of increased federal income taxes would be contrary to the intention of the Congress, inflationary in character and adversely affect the program and policies of the Office of Price Administration to stabilize prices.

12. It appears that this is the first time since the United States entered the war that the Commission is called upon to make a determintaion or to fix rates under said sliding-scale arrangement. The application of the arrangement should be reconsidered in the light of the Government's program to prevent inflation and to stabilize the cost of living.

13. The question of under what circumstances rates and charges for gas service, should be increased during this period of national emergency resulting from the war, is one of basic national importance, in which the Office of Price Administration has a substantial interest.

NOW, THEREFORE, your petitioner prays that the Commission enter an order granting him leave to intervene and become a party to this proceeding.

Respectfully submitted,

LEON HENDERSON
Price Administrator
Office of Price Administration

By: DAVID GINSBURG
General Counsel

HARRY R. BOOTH
Utilities Counsel

214 *Petition for Reopening of Proceeding*

On August 18, 1942, the Commission granted the Price Administrator of the Office of Price Administration (sometimes hereinafter referred to as Petitioner) leave to intervene and become a party to this proceeding.

On September 14, 1942, counsel for the Price Administrator of the Office of Price Administration, in consideration of the several statements of the Commission as to the scope of the matters at issue in this proceeding, orally moved the Commission to issue appropriate orders under which the Commission could, in this proceeding, reconsider the provisions of the "sliding-scale arrangement" in the light of present economic conditions, and could consider all proper factors necessary for a determination of just and reasonable rates and charges for service rendered by public utilities (Tr. 788—796).

Such motions were taken under advisement by the Commission (Tr. 796). However, the hearings were concluded on September 14, 1942, and the Commission has not made any ruling upon said motions.

215 Wherefore, your Petitioner renews said motions and respectfully requests that the Commission issue appropriate orders to:

Reopen this proceeding and direct that further evidence be taken with respect to:

1. The effect of present changed economic conditions upon the provisions of the "sliding-scale arrangement" made in 1935.

2. The necessity for revision of the provisions of the "sliding-scale arrangement" because of present economic conditions, particularly those provisions which relate to rate of return and the allowance of federal income taxes as an operating revenue deduction.

3. The relationship and effect of the Federal Government's program to control inflation and stabilize the cost of living to the "sliding-scale arrangement" and the proceeding.

4. The questions raised by its vice-chairman as to the proper method of allocating expenses to the Company's customers and the proper amounts which should be charged against the operating costs of the Company for rate making purposes

5. All other factors which are necessary to a proper determination of the justness and reasonableness of the rates and charges of a public utility.

* * * * * * * * * *

219 Public Utilities Commission of the District of Columbia

In the Matter of Rates, tolls, charges, tariffs, rules, regulations, and conditions of service of the WASHINGTON GAS LIGHT COMPANY.

Findings and Opinion Formal Case No. 316

Nature of Proceeding

This is a proceeding involving the usual annual determination of rates, tolls, charges, tariffs, rules, regulations, and conditions of service of the Washington Gas Light Company pursuant to the provisions of the sliding scale arrangement established by Order No. 1458, dated December 13, 1935.

The sliding scale arrangement provides that prior to the beginning of each rate year (defined as the twelve months' period from September 1 to August 31, inclusive) this Commission shall determine after public notice and opportunity for hearing:

(1) An amount to be applied for the decrease or increase of rates to be effective during the said rate year, and

(2) A schedule of rates, rules, and regulations accomplishing such decrease or increase.

On March 20, 1942, (Order No. 2219), the Commission ordered that an investigation be made, and on July 21, 1942, the Commission set the matter for hearing. Hearings were held on August 18 and 19, 1942, and on September 4, 11, 14, and 30, 1942.

The rates in effect during the last test year (the twelve months' period ended June 30, 1942) were those established by Order No. 1921, effective as of September 1, 1940. These rates were based upon the operating experience of the Company for the test year July 1, 1939, to June 30, 1940.

During the present proceeding, we indicated that our responsibilities are twofold. In the first place, it is the duty of this Commission to determine, in accordance with the provisions of the sliding scale arrangement as such arrangement is now constituted, whether the Washington Gas Light Company is entitled to an increase in rates for the year commencing September 1, 1942, and the
220 amount of such warranted increase. This responsibility is so clearcut that to ignore it would constitute an evasion of our duty and would be a serious reflection upon the ability of this Commission to cope with its problems in a fair and impartial manner.

Secondly, having made this determination, it is our duty to give recognition to existing conditions and the bearing of such conditions upon the question before us. In addition to the present economic situation, which admittedly is of vital importance, we must also consider the credit position of the Company and its ability to finance its requirements for plant expansion and to render adequate service to the consumers in the District of Columbia.

At the commencement of hearings in this proceeding, August 18, 1942, the Office of Price Administration, through H. R. Booth, its Utilities Counsel, filed with this Commission its petition for leave to intervene. This petition was granted, and Counsel for the Office of Price Administration attended all the hearings and submitted briefs.

Exhibits were presented by the Commission's Chief Accountant and Chief Engineer reflecting the results of their investigations, which extended over a period of several months. The Chief Engineer's testimony related to the allocation of the rate base to service outside the District of Columbia. The Chief Accountant testified that computations in accordance with the sliding scale arrangement in-

dicated that the Company was entitled to a rate increase of $324,718.06. The Company's computation indicated a rate increase of $381,597. The difference between the two amounts is occasioned entirely by certain adjustments to operating expenses and taxes and those required under Section 6 of the sliding scale arrangement made by the Commission's witness but protested by the Company.

Careful study has been given to all factors having a bearing upon these problems in arriving at the decisions hereinafter set forth.

Staff Adjustments

Payment to the Greater National Capital Committee

The question involved is whether or not the payment made by the Company is in the nature of a contribution or a sales promotion expense. The Greater National Capital Committee is an arm of the Washington Board of Trade, and its chief function is to attract visitors to the Nation's Capital. The principal means employed is that of
22 inducing the holding of conventions in Washington.

In Formal Cases 292 and 304 the Commission held that the benefits derived by the Washington Gas Light Company from this expenditure were of such a conjectural nature that it must be viewed as a donation to a worthy civic organization rather than a sales promotion expense as the latter term is ordinarily defined. We, likewise, hold this view and find further that in view of the present overcrowded condition of the city due to the war effort there is even less justification for such an expense. The amount in controversy, $88.85, stated by the Company as being a token payment for purposes of Commission ruling, should therefore be disallowed as an operating expense for rate-making purposes.

Sales Promotion Expense

This issue arises by reason of the Commission's requirement that the Merchandising and Jobbing activities of the Company be segregated from its principal business of fur-

nishing gas service and relates to the allocation of certain expenses applicable to both the sale of gas and the sale of appliances, namely the salaries paid retail salesmen and the cost of advertising appliances.

The Sales Promotion Department of the Company is composed of several divisions, and the salaries of the retail salesmen constitute only about 25% of the total salesmen's salaries. The remaining 75% covers wholesale and promotional salesmen who ordinarily are not engaged in the sale of appliances and therefore receive little or no commission. The retail salesmen are paid comparatively small salaries plus commissions on appliance sales. The commissions are paid not only on appliances sold by the Gas Company, but upon appliances sold by other dealers when such sales result from the efforts of the Gas Company's salesmen. In accounting for the salaries and commissions paid the retail salesmen, their entire salaries and the commissions paid on appliance sales by other dealers are charged to Sales Promotion Expenses, while commissions paid on appliances sold directly by the Gas Company are charged to Merchandising and Jobbing Expense. The Company contends that this practice is proper for the reason that it represents an allocation based upon the time of the retail salesman devoted to extolling the virtues of gas as a fuel and the actual sale of appliances. The Company cites the fact that on the average the salesmen close only one sale out of fifteen calls. The Commission's witness contends that the salaries paid these salesmen represent additional compensation for the selling of appliances, and such salaries should be accounted for in the same manner as the commissions—that is, upon the ratio of commissions paid on appliances sold by the Company to the total commissions paid.

222 The compensation of the retail salesmen depends in major part on the sale of appliances, and it is therefore obvious that his major efforts are devoted to the selling of appliances. It follows that the compensation paid these salesmen, whether it be in the form of commissions or salaries, is assignable to Sales Promotion Expense.

and Merchandising and Jobbing on the basis of results produced, and since this is the method used by the Commission's witness, we think the adjustment is proper.

On the second item, of appliance advertising, the Company contends that 80% of such advertising is a proper promotional expense, whereas the Commission's witness has recommended that only 50% of such expense be allowed. The only support for the 80% allocation advanced by the Company was the judgment of their Sales Manager, and the ratio of appliance sales by the Company to sales made by other dealers. The allocation made by the Commission's witness is based upon the practice of the Company of paying, under certain conditions, 50% of the cost of advertising gas appliances by other dealers. In view of the Commission's requirements that the appliance business of the Company be segregated entirely from its gas business, the Merchandising and Jobbing activities of the Company must be viewed in the light of the relations of the Company with any other appliance dealer. The appliance or general advertising of the Company for the test year under consideration constituted only about 11% of the total advertising, the remainder being characterized as institutional advertising. The adjustment proposed by the Commission's witness relates only to the former. The fact that the Company segregates appliance advertising from its other or institutional advertising might of itself be sufficient grounds for saying that all of such advertising relates entirely to the Merchandising Activities of the Company. However, in view of the practice of participating in advertising campaigns of other dealers we will go no further than the adjustment made by the Commission's witness.

We hold that the aggregate adjustment of $26,824.75 applicable to the items discussed above is proper.

Expense of Financing

The Commission's witness excluded from operating expense certain costs incident to increasing the authorized capital stock of the Company, on the grounds that they per-

tain only to the securing of new capital and as such are properly chargeable to capital stock expense when and if the stock is issued. The Company contends that
223 these expenditures should be permitted in operating expenses for the reason that, through no fault of the Company, the Commission was not organized and able to give the approval necessary when the stock in question ($4.25 preferred) could have been sold advantageously. We sympathize with the Company's position, but in view of the requirements of the classification of accounts and the nature of the items in question, and due further to the fact that the consumers likewise were not at fault, we cannot depart from proper accounting and therefore hold that the adjustments made by the Commission's witness, aggregating $3,256.67, are proper.

Payment to U. S. O.

The Commission's witness excluded from operating expense a payment of $1,250.00 to the U. S. O. on the grounds that such payment was a donation not necessary in the furnishing of gas service and as such properly includible in Account 538—Miscellaneous Income Deductions. The Company contends that this is not an ordinary donation, inasmuch as the U. S. O. is a war project backed by the Federal Government and that the morale and behavior of the armed forces are of vital concern to the Company and to all citizens. We agree, of course, that the U. S. O. is a necessary organization in the conduct of the war effort, but we cannot agree that the donation made by the Company is different from other donations to worthy causes. The customers of the Company are called upon for direct donations to this organization, and they should not be called upon for a further donation in the form of increased rates for gas service. We, therefore, approve the adjustment as made by the staff.

Excess Profits Tax

The Commission's witness eliminated the excess profits tax paid for the year 1941 after adjustment for the effect

of such elimination on normal taxes because of the possible future adverse effect upon consumers with little material benefit to the Company. The Company contends that it would not have been liable for excess profits tax if the Commission had been in a position to act expeditiously on its application for authority to issue $4.25 perferred stock in 1941 and that the Company had no "excess" profits in the popular sense of the word. We recognize the equity of this contention. However, we cannot overlook the fact that the recognition of excess profits tax as a proper element in the determination of rates for service under the rates of taxation presently proposed in the pending Revenue Act for 1942 would result in a continuing cycle of rate increases severely penalizing the consumer without materially
224 benefiting the Company. We are of the opinion that as a general proposition, excess profits taxes under existing conditions should not be considered in the determination of rates. Therefore, the adjustment of $43,928.02 to eliminate this item is approved.

Section 6 Adjustment

This item relates to the adjustment under Section 6[1] of Order No. 1458 on account of the increase in the price of fuel. In making this adjustment the Company has used the inventory cost of fuel as of June 30, whereas the Commission's witness has used such cost as of May 31. The Commission's witness contends that since the operating expenses of the Company were not affected by the average cost of fuel as of June 30, 1942, the use of such cost would be contrary to the provisions of Section 6. The Company contends that the unit cost of fuel as of June 30 should be used, on the theory that the purpose of Section 6 is to pro-

[1] If, at any Adjustment Date, it appears that the operating expenses of the Companies for the Test Year were increased or decreased by reason of change in the rates for production labor, the unit price of natural gas, the delivered unit price of other fuels, or taxes, and the aggregate amount attributable to such change during the Test Year for any or each of the above enumerated items exceeds 5 per centum of the aggregate amount of any such item for the Test Year, then there shall be an adjustment in the Amount Available for Return equal to the effect of such change in unit costs for the entire year.

vide for known increased costs. It is clear that the intent of Section 6 is to allow certain adjustments for increased costs, but it is equally clear that there is a definite limitation on the method of determining the amount of the adjustment. If we were to apply the purpose of Section 6 indiscriminately there is no doubt that other adjustments would be necessary, some upward and some downward. We think that a departure from the specific provisions of Section 6 would not be warranted, and even though it is recognized that the purpose of Section 6 is to provide for increased costs, we hold that the adjustment made by the Commission's witness is in accord with the specific provisions of Section 6 and that the disputed difference of $3,294.63 should not be considered in the determination of amount available for increase of rates.

Operating Expenses

In addition to the adjustments made by the witness for the Commission, Commissioner Hankin raised several questions relating to the propriety of certain operating expenses.[2] On these questions we have the following opinion and conclusion.

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Order No. 1458, which established the sliding scale arrangement, provides that the Commission shall determine the net amount available for return for each test year by deducting from the gross operating revenue of the Company the adjusted operating expenses for the test year, the accruals for retirement reserve, reasonable accruals for uncollectible bills, and reasonable accrual for taxes.

The order further provides that the operating expenses of the Company shall be adjusted for any accounting departures[3] during the test year; for over or under accruals in taxes, uncollectible bills, and such other accrued accounts

[2] Three items aggregating $60 were conceded by the Company because of the insignificance of the amount, and adjustment has been made therefor.

[3] "Accounting departure" means a departure, not resulting solely from the exercise of judgment, from the correct application of the accounting classification and interpretations prescribed by the Commission, not in conflict with the sliding scale arrangement, prevailing at the date of such entry.

for which adjustment is provided by the prevailing accounting classification; and to exclude those expenses allocated to gas service outside of the District of Columbia.

Thus the sliding scale arrangement does not attempt to define operating expenses or to indicate that certain types of operating expenses should be excluded in determining the net amount available for return, beyond the adjustments described above. The sliding scale arrangement, however, does clearly indicate that operating expenses should be determined in accordance with the prevailing accounting classification.

On January 11, 1940 (Order No. 1846), this Commission prescribed for use by the Washington Gas Light Company the Federal Power Commission Uniform System of Accounts prescribed for Natural Gas Companies subject to the Provisions of The Natural Gas Act, with certain modifications to permit the continuance of the sliding scale arrangement. This system of accounts states the purpose of the operating expense accounts to be as follows:

226 "The operating expense accounts (701 to 809) are designed to show in detail the cost (except depreciation, amortization and depletion, certain property losses, and taxes) of furnishing gas utility service."

It follows, therefore, that if the operating expenses of the Company are recorded in accordance with the prevailing Uniform System of Accounts the function of the Commission is to determine whether or not the expenses so recorded are reasonable. Obviously, the Commission itself cannot, collectively or individually, review the books of the Company to make a determination as to the reasonableness of every item and must depend upon its staff to call attention to those that appear questionable. This the staff has done, and we have herein expressed our opinion relative to such items. We find that the operating expenses of the Company for the test year ended June 30, 1942, excepting the adjustments heretofore discussed, have been recorded in accordance with the Uniform System of Accounts prescribed by this Commission and that such expenses are fair

and reasonable and properly considered in the determination of rates under the sliding scale arrangement.

Federal Income and Excess Profits Taxes

The computations of the net amount available for rate increase presented by both the Company and the Commission's witness included accruals for Federal income taxes at the rate of 40% for the last six months of the test year under consideration (January 1, 1942, to June 30, 1942), in accordance with that provision of the sliding scale arrangement which provides for a reasonable accrual of taxes. For the first six months of such test year (July 1, 1941, to December 31, 1941), this same rate was applied in accordance with the provisions of Section 6 of the sliding scale arrangement.

However, present-day conditions compel us to consider whether accruals for Federal income taxes, at rates considerably higher than rates in effect in previous years, should be allowed in their entirety for rate-making purposes. Much has been said recently regarding the allowance of Federal income taxes on a normal-year basis rather than on the basis prevailing in a so-called "abnormal year." Our difficulty here lies in the necessity for making a distinction between normal and abnormal taxes. It is true that rates of taxation imposed during the year 1941 and proposed for the year 1942 are substantially in excess of rates imposed in prior years. However, it requires very little imagination to foresee that the proposed rate for 1942, while such rate is abnormal as compared with the rates in effect in prior years, may well be a normal or even a subnormal rate for some years to come. After weighing all factors
227 to the best of our ability, we conclude that for the purpose of determining the amount available for rate increase for the rate year beginning September 1, 1942, the calculation of Federal income taxes for the test year under consideration (July 1, 1941, through June 30, 1942) at the rate of 31% is reasonable. Such a calculation will result in a further decrease of $115,863.09 in adjusted oper-

ating expenses and will eliminate the adjustment of $4,929.39 to provide for increase in taxes under the provisions of Section 6 of the sliding scale arrangement.

With respect to excess profits taxes, we are of the opinion that no increase in rates should be predicated upon the liability of a utility for excess profits taxes. For this reason we have disallowed as an operating expense for the test year ended June 30, 1942 the excess profits tax of $43,928.02, in order to prevent the direct inflationary effect which such allowance would invite.

The record indicates that the Company will not be liable for excess profits tax for the year 1942. However, to guard against the possibility that any increase in rates might result in the imposition upon the Company of liability for excess profits taxes on revenue derived from such rate increase, we requested the Company to propose a protective arrangement which would obviate such a possibility. The arrangement proposed by the Company, which in our opinion will achieve the desired result, is set forth below:

"In the event such increased rates would result in the payment of excess profits taxes by the Washington Gas Light Company, any portion of the amount derived from the increased rates hereinafter authorized, which, if retained by the Company would be subject to excess profits tax, shall be recorded in a specially provided deferred credit account. The amount derived from increased rates shall be deemed to be 2.28% of the amount billed for sales of gas subsequent to the effective date of this order. The above stated percent is the ratio of the increase authorized herein to the total sales of gas for the test year ended June 30, 1942, calculated at the rates hereinafter authorized.

"The amount recorded in the deferred credit account as of December 31, 1942, and as of December 31st of each year thereafter so long as this order shall remain in effect, shall be returned to the gas customers in the District of Columbia by appropriate deductions from gas bills rendered to such customers as soon after December 31st as practicable. The amount of individual refunds

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shall be determined by ascertaining, by classes of service, the relation of the amount refundable to the total amount billed during the month of December and applying such percentage to each customer's December bill. Refunds so determined shall be shown as credits on customers' bills as soon after December 31st as practicable. In the event the amount recorded in the deferred credit account as of December 31st is less than $10,000, such amount shall be treated as operating revenue."

Financial Position of Company

There is still another and very important problem for consideration, namely the financial position of the Company and particularly its ability to secure capital economically for the purpose of expending its plant to meet the growing demands for gas service. We must weigh the necessity for an increase in rates against the broad problem of adequate service. Low rates are desirable only when coupled with adequate service, and such service cannot be rendered by the Company if it is unable to secure funds to provide the necessary additional facilities. The District of Columbia has been characterized as the No. 1 defense area of the United States, and it is vital that the Company be in a position at all times to provide adequate service.

It is a matter of record that the Company recently attempted to sell 40,000 shares of $5.00 cumulative preferred stock, but was successful only to the extent of being able to sell 18,206 shares of this stock. This was due to a number of factors, and a recitation of events and facts preceding and subsequent to the offering of this stock shows that the financial position of the Company merits our most serious consideration.

On January 17, 1941, the Company filed an application with this Commission for authority to increase its capitalization by 90,000 shares of $4.25 preferred stock. Due principally to the lack of a quorum on the Commission this application was not acted upon until March 26, 1942 (Order No. 2221). At that time, due to depressed market condi-

tions, the Company was unable to sell this newly created stock and endeavored to sell 40,000 shares of its $5.00 cumulative preferred stock with the result heretofore stated.

229 In approving the sale of the $5.00 stock the Commission considered, among other factors, the financial position of the Company as of December 31, 1941. At that time income deductions and preferred dividends were earned 1.88 times, and the earnings per share of common stock were $2.24. Our order was issued April 21, 1942, and income for the twelve months ended April 30, 1942, showed that income deductions and preferred dividend coverage had declined to 1.75 times, while earnings per share of common had declined to $1.96. For the twelve months ended July 31, 1942, the former figure had declined to 1.67 times and the latter to $1.80. This decline in income is not due entirely to increased provision for Federal income taxes. Substantial increases in the cost of labor and material have occurred during the period under discussion, and such increases have been provided for only in part in the determination of the amount available for rate increase. Labor costs included in operating expenses for the test year under consideration exceed labor costs for the prior test year by more than $300,000, a part of which was attributable to the increased volume of business.

Increase in Rates Warranted

After careful consideration of all factors having a bearing on this case, including the fact that the credit position of the Washington Gas Light Company depends in large measure upon the integrity of this Commission in administering the sliding scale arrangement, we are of the opinion that, after making the adjustments hereinbefore approved, the amount available for increase in rates under the sliding scale arrangement for the rate year beginning September 1, 1942 is $201,424.74.

This increase in rates will not restore the earnings of the Company to the level obtaining prior to the decline, nor is it the intent of the sliding scale arrangement to do so. It

will, however, tend to arrest the decline and preserve the principles inherent in the sliding scale arrangement, on which, as heretofore stated, the credit position of the Company depends in large measure.

The amount of $201,424.74 was determined as follows:

	Adjusted Operating Revenues		$8,918,656.27
230	Adjusted Operating Expenses		7,301,988.67
	Net amount available for return prior to adjustment allowed under Section 6 of Order No. 1458		$1,616,667.60
	Adjustment under Section 6 of Order No. 1458		
	Production Labor	$20,043.06	
	Production Fuels	41,572.89	(61,615.95)
	Adjusted amount available for return		$1,555,051.65
	Return allowed (6½% of Rate Base of $28,088,322.57)		1,825,740.97
	Deficiency in return		270,689.32
	Amount available for rate increase for rate year beginning September 1, 1942 (¾ of Deficiency)		203,016.99
	Less: Undistributed portion of amount available for reduction of rates for rate year beginning September 1, 1940		(1,592.25)
	Net amount available for rate increase		$ 201,424.74

It will be noted that the final conclusion as to the net amount available for increase in rates is $123,293.32 less than the amount determined by the Commission's staff. This difference is due to the elimination from operating expenses of the $90.00 conceded by the Company (see Footnote 2—Page 7) and to the computation of the accrual for Federal Income Taxes at 31% rather than 40%.

Disposition of Amount Available for Increased Rates

The Company revised rate schedules which would increase its annual revenues by $357,500. This amount is $156,075 in excess of the amount that we have concluded is available for rate increase. The staff of the Commission has prepared new rate shcedules providing increased annual revenue of $200,141, to be apportioned among the different classes of consumers as follows:

Residential	$ 53,429
Commercial	35,908
Domestic Space Heating	101,208
Commercial Space Heating	6,387
Seasonal Off Peak	218
Wholesale Apartment House	2,991
	$200,141

The difference of $1,283.74 between the above amount and the amount found available for rate increase will be held available for future rate increase.

231 The rate schedules presented by the Company eliminated the present separate schedule for space heating, proposing to include future consumption for that purpose along with regular domestic or commercial use. This will eliminate the necessity of maintaing two separate meters on premises using gas for both space heating and domestic or commercial purposes. We conclude that, in view of a possible meter shortage, the elimination of the separate space heating schedule is warranted, and the schedules submitted by the Commission's staff have been prepared on this basis. We further conclude that the apportionment of the $200,141 as the amount available for increase in rates is fair and equitable.

Effect of Increased Rates

The new domestic rates will result in an average increase of $.03 per month per customer. Domestic customers using 2,500 cubic feet or less per month will sustain no increase.

Space heating customers' monthly bills for the eight-month heating season will be increased an average of $.57 for all customers. The typical space heating cutomer's bills will be increased by $.72 per month for the eight-month heating season. The average increase for commercial and industrial customers will amount to $.46 per month. The total increase for all customers is 2.28% in excess of rates for the preceding year.

The cost of gas constitutes but 1.17% of the average cost of living in Washington, according to statistics of the Labor Department, and based on the percentage increase for gas service just stated the cost of living index would be increased by only about 1/37 of 1%. We cannot conceive that such an increase would have material inflationary tendencies.

Conclusions and Findings

We conclude and find as follows:

(1) That the rate base for determining rates to be charged by the Washington Gas Light Company under the sliding scale arrangement for the twelve-month period beginning September 1, 1942, is $28,088,322.57, including working capital of $1,172,656.02, $597,044.81 of which is for cash working capital and $575,611.21 for materials and supplies.

(2) That gross operating revenues during the test year ended June 30, 1942 amounted to $8,918,656.27; that adjusted operating expenses including taxes amounted to $7,301,988.67; that the adjustments providing for increase in certain operating costs in accordance with Section 6 of Order No. 1458 amount to $61,615.95; that the amount available for return is $1,555,051.65; that the amount to be reflected in increased rates for the rate year beginning September 1, 1942, after considering $1,592.25 remaining from the amount available for rate decreases authorized by Order No. 1921 dated August 23, 1940, is $201,424.74.

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(3) That the amount of $201,424.74 should be distributed: $53,429 to Schedule "A," $101,208 to domestic space heat-

ing customers formerly served under Schedule "B" who will hereafter be served under Schedule "A," $35,908 to Schedule "C," $6,387 to commercial space heating customers formerly served under Schedule "B" who will hereafter be served under Schedule "C," $218 to Schedule "E," $2,991 to Schedule "F," and $1,283.74 to subsequent years' rate adjustment.

An appropriate order will issue.

By the Commission (Chairman Flanagan and Commissioner Kutz). Commission Hankin dissents for the reasons stated in the accompanying dissenting opinion.

E. J. MILLIGAN
Executive Secretary

October 13, 1942

288 Public Utilities Commission of the District of Columbia

Order No. 2401

October 13, 1942.

In the matter of Rates, Tolls, Charges, Tariffs, Rules, Regulations, and Conditions of Service of Washington Gas Light Company.

Formal Case No. 316.

In accordance with the opinion rendered in this proceeding, It Is Ordered:

Section 1. That the rate base for determining rates to be charged by the Washington Gas Light Company under the sliding scale arrangement for the 12-month period beginning September 1, 1942, be $28,088,322.57, including $1,172,656.02 for working capital.

Section 2. That the rates, tolls and charges to be charged by the Washington Gas Light Company for gas service in the District of Columbia shall be in accordance with the following rates, tolls, charges, tariffs, rules, regulations, and conditions of service.

. . . . . .

300 Section 3. That, under the terms of the sliding scale arrangement, the rates, tolls, charges, rules, regulations, and conditions of service herein prescribed became effective as of September 1, 1942. However, the Commission directs the attention of the Company to the provision contained in the Act approved October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes", which reads as follows:

"The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

Section 4. That, in the event the increased rates authorized in Section 2 hereof would result in the payment of excess profits taxes by the Washington Gas Light Company, any portion of the amount derived from such increased rates, which, if retained by the Company would be subject to excess profits tax, shall be recorded in a specially provided deferred credit account. The amount derived from increased rates shall be deemed to be 2.28 per cent of the amount billed for sals of gas subsequent to the effective date of this order. The above stated per cent is the ratio of the increase authorized herein to the total sales of gas for the test year ended June 30, 1942, calculated at the rates herein authorized.

The amount recorded in the deferred credit account as of December 31, 1942, and as of December 31st of each year

thereafter so long as this order shall remain in effect, shall be returned to the gas customers in the District of Columbia by appropriate deductions from gas bills rendered to such customers as soon after December 31st as practicable. The amount of individual refunds shall be determined by ascertaining, by classes of service, the relation of the amount refundable to the total amount billed during the month of December and applying such percentage to each customer's December bill. Refunds so determined shall be shown as credits on customer's bills as soon after December 31st as practicable. In the event the
301 amount recorded in the deferred credit account as of December 31st is less than $10,000, such amount shall be treated as operating revenue.

By the Commission:

A True Copy:

* * * * * * * * * * *

302 Before the Public Utilities Commission of the District of Columbia

In the matter of Rates, tolls, charges, tariffs, rules, regulations and conditions of service of the Washington Gas Light Company

Petition for Vacation of Order of October 13, 1942, and for Reopening of Proceeding, and for Leave to Intervene

Comes now, Leon Henderson, Price Administrator of the Office of Price Administration on behalf of James F. Byrnes, Director of Economic Stabilization, and respectfully petitions the Commission to vacate its order of October 13, 1942, and to reopen this proceeding and to allow this petitioner to intervene in such reopened proceeding, and in support of said petition respectfully shows:

1. Hearings in this proceedings, which was instituted by order of March 20, 1942, were concluded on September 30, 1942.

2. The Act of October 2, 1942, entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes", provides, among other things:

"That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

3. By virtue of the authority vested in him by the Constitution and the statutes, particularly said Act of October 2, 1942, and "in order to control so far as possible the inflationary tendencies and the vast dislocations attendant thereon which threaten our military effort and our domestic economic structure, and for the more effective prose-
303 cution of the war," the President, by Executive Order 9250, dated October 3, 1942, established the Office of Economic Stabilization, and has appointed James F. Byrnes as the Director thereof.

4. Paragraph 4 of Title VI of said Executive Order provides that:

"The Director shall be the agency to receive notice of any increase in the rates or charges of common carriers or other public utilities as provided in the aforesaid Act of October 2, 1942."

5. On October 13, 1942, this Commission issued its findings, opinion, and order in this proceeding. Said order prescribes rates, tolls, and charges which will result in a general increase in the rates and charges which were in effect on September 15, 1942.

6. The rates, tolls, and charges prescribed in said order of October 13, 1942, are proposed to be made effective as of September 1, 1942, a date prior to the issuance of such order.

7. The Commission's order of October 13, 1942, was issued without notice to the Director of Economic Stabilization, and without having accorded the Director of Economic Stabilization the opportunity of "timely intervention," as provided in the Act of October 2, 1942.

8. In order to effectuate the provisions of Paragraph 4 of Title VI of Executive Order 9250 and of Section 1 of the Act of October 2, 1942, the Director of Economic Stabilization, on October 14, 1942, has by order (Order No. 1) designated "the Price Administrator of the Office of Price Administration as the representative of the Director of Economic Stabilization to receive notices of increases in common carrier or other public utility rates and charges, with authority to issue appropriate regulations for the receipt of such notices and to intervene and participate in proceedings before Federal, State, and municipal authorities in connection with proposed increases in such rates and charges, subject to such directives on policy as may be issued by the Director."

9. The issuance of said order of October 13, 1942, without notice to the Director of Economic Stabilization, or his designee, and without permitting opportunity to intervene in this proceeding, is invalid and constitutes a
304 denial to the Director of Economic Stabilization of his right to appear in this proceeding for the purpose of presenting evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942 as amended by the Act of October 2, 1942, and the effect thereon of increases in rates and charges of common carriers or other public utilities.

Wherefore petitioner prays: (1) That the order of October 13, 1942, in this proceeding be vacated; (2) that the proceeding be reopened for the purpose of receiving further evidence and hearing further argument herein; (3) that your petitioner be allowed to intervene and to file a brief in such reopened proceeding; and that the Commission

enter such further order or orders in the premises as to it may seem reasonable and just.

Respectfully submitted,

LEON HENDERSON
Price Administrator
Office of Price Administration

On Behalf of
JAMES F. BYRNES
Director of Economic Stabilization

By DAVID GINSBURG
General Counsel

HARRY R. BOOTH
Utilities Counsel
Legal Division
Office of Price Administration

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Public Utilities Commission
of the District of Columbia

Order No. 2404.

October 23, 1942.

Formal Case No. 316.

In the matter of Rates, tolls, charges, tariffs, rules, regulations and conditions of service of the Washington Gas Light Company.

The Commission has given consideration to the petition filed on behalf of the Director of Economic Stabilization by the Price Administrator of the Office of Price Administration, wherein request is made for a reopening of the proceedings in this case "for the purpose of presenting evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942, as

amended by the Act of October 2, 1942, and the effect thereon of increases in rates and charges of common carriers or other public utilities," and more particularly the increase in rates authorized by Order No. 2401. The Commission has likewise reconsidered all the proceedings in this case, including the following facts:

On March 20, 1942, the Commission issued an order directing an engineering and accounting investigation to be made relative to the rates, tolls, charges, tariffs, rules and regulations, and conditions of service of the Washington Gas Light Company, including an investigation in conformity with the sliding scale arrangement, which prescribes the "rate year" from September 1 to August 31. Notice of intention to hold a formal public hearing upon the subject matter of the investigation was included in the order. A detailed investigation was made by the staff of the Commission, extending from April, 1942, to August, 1942.

Under date of July 21, 1942, the Commission gave formal notice of a public hearing to be held on August 18, 1942.

On August 14, 1942, a prehearing conference was held, which was attended by members of the Commission, its staff, and utility counsel of the Office of Price Administration (the same counsel now appearing on the petition filed herein), and counsel and staff of the Gas Company.

On August 18, 1942, formal public hearing was begun, at which hearing the Office of Price Administration, through its utility counsel, was permitted to intervene and to become a party to this proceeding with the consent of the Washington Gas Light Company.

307 During the course of the hearing on August 19, counsel for the Office of Price Administration asked that the hearing be continued in order to permit him to prepare for cross-examination of the witnesses who had appeared, and to prepare testimony to be presented on behalf of the Office of Price Administration, which request was granted, and the hearing was continued for such purposes for a period of two weeks.

The proceeding was reconvened and further hearings took place on September 4, 8, 11, and 14, during which time the Office of Price Administration, through its counsel, cross-examined witnesses and presented testimony.

The record was closed on September 14, and all interested parties, including counsel for the Office of Price Administration, were given until September 25 to file briefs. On that date the Office of Price Administration, through its counsel, filed a brief.

On September 25, 1942, the Commission granted petitions of the Fort Davis Citizens' Association and Washington League of Women Shoppers to intervene. Pursuant to the order granting leave to these petitioners to intervene, the proceeding was reopened, and was set for further formal public hearing on September 30. Counsel for the Office of Price Administration participated in the reopened proceedings and filed a supplemental brief.

On October 13, 1942, the Commission rendered its findings and opinion and issued Order No. 2401, prescribing new rates which, under the sliding scale arrangement, became effective for the "rate year" beginning September 1, 1942.

Notwithstanding the fact that the record in this case was closed prior to the approval of the Act of October 2, 1942, the record and proceedings clearly indicate that the Commission followed in substance the provisions of that Act. However, in view of the petition filed on behalf of the Director of Economic Stabilization, the Commission will reopen the record for the purpose of receiving additional evidence from the Office of Price Administration on behalf of the Director of Economic Stabilization as hereinafter ordered.

It Is Ordered:

Section 1. That the record in this proceeding be, and the same hereby is, reopened for the purpose of receiving from the Office of Price Administration, on behalf of the
308 Director of Economic Stabilization, additional evi-

dence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and intervention is granted for such purpose.

Section 2. That the reopened proceedings be set for formal public hearing on Monday, November 2, 1942, at 10 a. m., in Room 500, District Building.

By the Commission: (Chairman Flanagan and Commissioner Kutz), Commissioner Hankin dissenting.

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316 Before the Public Utilities Commission of the District of Columbia

In the matter of Investigation of rates, tolls, charges, tariffs, rules, regulations and conditions of service of the Washington Gas Light Company

P. U. C. No. 3305

Formal Case No. 316

Petition for Amendment of Order No. 2404 of October 23, 1942, and for Stay of Order No. 2401 of October 13, 1942.

Comes now, Leon Henderson, Price Administrator of the Office of Price Administration, on behalf of James F. Byrnes, Director of Economic Stabilization, and respectfully petitions that the Commission amend its Order No. 2404 of October 23, 1942, and stay its Order No. 2401 of October 13, 1942, and in support of such petition respectfully shows:

1. On October 13, 1942, the Commission issued its opinion in this proceeding setting forth certain findings with respect to the rates and charges and revenues of the Washington Gas Light Company and, in accordance therewith, issued its Order No. 2401 prescribing certain schedules of rates and charges to be demanded and received by the Washington Gas Light Company, which rates and charges are in excess of those which were in effect on September 15, 1942, for service rendered by the Washington Gas Light Com-

pany. The increased rates and charges so ordered are proposed to be made effective as of September 1, 1942.

2. On October 19, 1942, Leon Henderson, Price Administrator of the Office of Price Administration, on behalf of James F. Byrnes, Director of Economic Stabilization, filed with this Commission a petition requesting:

(1) That the Order of October 13, 1942, in this proceeding be vacated; (2) that the proceeding be reopened
317 for the purpose of receiving further evidence and hearing further argument herein; (3) that the Director of Economic Stabilization be allowed to intervene and to file a brief in such reopened proceeding; and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

3. On October 23, 1942, the Commission acting upon said petition of October 9, 1942, ordered:

"Section 1. That the record in this proceeding be, and the same hereby is, reopened for the purpose of receiving from the Office of Price Administration, on behalf of the Director of Economic Stabilization, additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and intervention is granted for such purpose.

Section 2. That the reopened proceedings be set for formal public hearing on Monday, November 2, 1942, at 10 a. m., in Room 500, District Building."

4. Said order No. 2404 of October 23, 1942 is only a partial grant of the relief prayed for by the Director of Economic Stabilization, in that it illegally restricts the right of intervention by the Director of Economic Stabilization, and in that it unnecessarily restricts the type of evidence which may be received at the further hearings to be held in this matter, and in that it neither grants nor denies the request that the Commission Order No. 2401 of October 13, 1942, be vacated.

Wherefore petitioner prays: (1) That the Commission amend its Order No. 2404 of October 23, 1942, and without further delay grant the specific relief prayed for in the said petition of October 19, 1942, filed on behalf of the Director of Economic Stabilization, and permit full intervention by the Price Administrator on behalf of the Director of Economic Stabilization and make him a party to this proceeding, and without restriction as to the type of evidence to be presented or otherwise limiting the scope of further hearings to be held in this matter; (2) that the Commission, if it refuses to vacate its order of October 13, 1942, as requested in said Petition of October 19, 1942, that it immediately stay the operation thereof pending further hearings and decision in this matter; and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

Respectfully submitted,

LEON HENDERSON
Price Administrator
Office of Price Administration

On Behalf of

JAMES F. BYRNES
Director of Economic Stabilization

318 By DAVID GINSBURG
General Counsel

NATHANIEL L. NATHANSON
Assistant General Counsel

HARRY R. BOOTH
Utilities Counsel
Legal Division
Office of Price Administration

319 Public Utilities Commission
of the District of Columbia

Order No. 2418.

November 9, 1942.

Formal Case No. 316

In the Matter of Rates, Tolls, Charges, Tariffs, Rules, Regulations and Conditions of Service of Washington Gas Light Company.

On October 19, 1942, the Price Administrator of the Office of Price Administration filed with this Commission a petition, on behalf of the Director of Economic Stabilization, wherein request was made for a reopening of the proceedings in this case "for the purpose of presenting evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942, as amended by the Act of October 2, 1942, and the effect thereon of increases in rates and charges of common carriers or other public utilities." The petition also asked that Order No. 2401 be vacated and that the petitioner be permitted to intervene in the reopened proceedings.

By Order No. 2404, the Commission, on October 23, 1942, acting upon the said petition, reopened these proceedings for the purpose of receiving from the Office of Price Administration, on behalf of the Director of Economic Stabilization, additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and the petitioner was granted leave to intervene for such purpose. The reopened proceedings were set for formal public hearing on November 2, 1942.

No testimony was adduced by the Price Administrator at the reopened hearing on November 2, and at the conclusion of the hearing on that date, counsel for the Price Administrator moved that the case be continued until 10 o'clock a.m. on November 4 in order to permit him to con-

sult with his associates as to future steps to be taken in the proceeding. Accordingly, the hearing was continued until November 4, at which time counsel for the Price Administrator presented evidence to show that the amount used by the Washington Gas Light Company for Federal income taxes in its determination of the amount available for increase in rates under the sliding scale arrangement was overstated by approximately $18,000.00. This was due to the fact that the Revenue Act of 1942 as finally approved contained a provision exempting from surtaxes that portion of the Company's income paid out as preferred stock dividends, which provision was not included in the draft of the bill upon which the original computation for income taxes was made. This was the only evidence offered.

In determining the amount available for rate increase under Order No. 2401, we used neither the computation of the Company nor the Commission's witness, but sub-
320 stituted, as a reasonable allowance for Federal income taxes, an amount of $378,554.30, such amount being 31% of the Company's taxable income for the test year ended June 30, 1942. It can thus be seen that the evidence presented by counsel for the Price Administrator produces a figure for Federal income taxes approximately $130,000.00 in excess of the amount actually allowed in our determination under Order No. 2401. The evidence adduced fails to show that the rates authorized by Order No. 2401 are inflationary. Accordingly,

It is Ordered:

That the petition of the Price Administrator of the Office of Price Administration, on behalf of the Director of Economic Stabilization, that Order No. 2401 be vacated, be, and the same is hereby, denied.

By the Commission. (Commissioner Hankin dissents for the reason stated in his dissenting opinion).

* * * * * * * * * * *

II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS DESIGNATED BY APPELLANT.

469 Before the Public Utilities Commission of the District of Columbia.

P. U. C. No. 3305, Formal Case No. 316

In the Matter of: Investigation of rates, tolls, charges tariffs, rules, regulations and conditions of service of the Washington Gas Light Company.

Room 500,
District Building,
Washington, D. C.,
August 18, 1942.

Met pursuant to notice, at 10:00 a. m.

Present:

Gregory Hankin, Chairman.

James M. Flanagan, Vice-Chairman.

Commissioner C. W. Kutz, Engineer Commissioner.

E. J. Milligan, Executive Secretary, P. U. C.

Lloyd B. Harrison, Special Assistant, Corporation Counsel.

H. L. Booth, O. P. A.

John Keane, D. C. Gas Employees Union.

Andrew McNamara, Machinists' Union.

Present also:

Marcy L. Sperry, President, Washington Gas Light Company.

E. S. Boothy, Vice-President, Washington Gas Light Company.

Robert C. Owers, Treasurer, Washington Gas Light Company.

470 O. H. Ritenour, Assistant Treasurer, Washington Gas Light Company.

Stoddard M. Stevens, E. Barrett Prettyman, and C. Oscar Berry, counsel, Washington Gas Light Company.

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471 *Proceedings.*

The Chairman: The hearing will come to order.

This is the annual hearing on the rates of the Washington Gas Light Company, which is set under the sliding scale plan. I will ask the parties to note their appearances. Is there anyone representing the Washington Gas Light Company here?

Mr. Prettyman: The Washington Gas Light Company appearances are Stoddard M. Stevens of New York, C. Oscar Berry and E. Barrett Prettyman of Washington.

Mr. Harrison: Lloyd Harrison for the Commission.

Chairman Hankin: Anyone else?

Mr. Booth: I would like to enter the appearance of the Office of Price Administration by H. L. Booth, Utilities Counsel.

I do not know whether this would be the proper time, Mr. Chairman, if the Commission please, but I have a petition here for leave to intervene. I should like to file that petition with this Commission at this time on behalf of the Office of Price Administration.

I regret to say that we were unable to comply with the rules of this Commission which require prior notice to the parties with respect to petitions of this character.

472 The decision to seek the Commission's approval for leave to intervene was reached only late yesterday, if the Commission please, and I was unable to advise counsel for the company until this morning of that decision. I advised counsel in a general way of the nature of this petition for leave to intervene (hands papers to members of Commission).

If I may, I would like to refer very briefly to its contents.

The petitioner is the Price Administrator of the United States. This office was created by the Emergency Price

Control Act of 1942. The functions and duties of the Administrator under that Act are to stabilize prices and prevent speculative and abnormal increases in prices, to eliminate and to prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions and scarcities caused by or contributing to the national emergency; assuring that defense appropriations are not dissipated by excessive prices.

Protecting persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent upon life insurance, annuities and pensions, from undue impairment of their standard of living, and
473 preventing a post-emergency collapse of values.

The program of the Office of Price Administration to stabilize commodity prices and costs of living is essential to the success of the war effort.

In accordance with the purposes of the Emergency Price Control Act, the Office of Price Administration has undertaken to stabilize commodity prices and the cost of living throughout the country by a series of maximum price regulations. Indeed, general price increases have appeared to be such a grave threat to the efficient production of war materials and to the stability of the national income, that the Office of Price Administration, within the limits of statutory authorization, has established maximum selling prices for all commodities and services.

The immediate purpose of these regulations is to guarantee to the American people that every living cost will remain stable and that the cycle of increasing prices, increasing wages, leading to disastrous inflation, may be averted.

The Washington Gas Light Company is a utility engaged in the business of supplying gas service to domestic commercial and industrial consumers in the District of Columbia at rates and charges which are subject to the
474 jurisdiction of the Public Utilities Commission of the District of Columbia. We of course recognize that utility rates are exempt from the jurisdiction of the Office

of Price Administration under the Emergency Price Control Act.

It appears that payments for gas service represent a regular item in the cost of living of a vast majority of residents in the District of Columbia.

This Commission by its order of December 13, 1935, established a sliding scale arrangement for determining the rates and charges which the company shall be allowed to demand and collect for supplying such gas service.

Pursuant to the provisions of said sliding scale arrangement the Commission has entered upon an investigation for the purpose of determining, among other things, the amount to be applied for the decrease or increase of rates during the rate year commencing September 1, 1942, and has directed that a hearing be held thereon commencing August 18, 1942.

This company, so we are informed, contends that its net earnings during the fiscal year ended June 30, 1942, were approximately $464,000 less than it was entitled to earn under the provisions of said sliding scale arrangement. It, therefore, seeks to have an increase of approximately
475 $387,122 applied during the rate year commencing September 1, 1942, and requests that its schedule of rates be adjusted accordingly.

It is contended by the company that according to the provisions of said sliding scale arrangement of December 1, 1935, the company is entitled to such increase in rates and charges to compensate it for the difference between the actual return earned during the last fiscal test year and the return which it was permitted to earn under the arrangement. To a certain degree the alleged deficiency is made up because of alleged estimated increases in Federal income and surplus profit taxes.

The approval of an increase in utility rates because of increased Federal income taxes would be contrary to the intention of the Congress, inflationary in character and would adversely affect the program and policies of the Office of Price Administration to stabilize prices.

It appears that this is the first time since the United States entered the war that the Commission is called upon to make a determination or to fix rates under said sliding scale arrangement. The application of the arrangement should be reconsidered in the light of the Government's program to prevent inflation and to stabilize the cost of living.

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We also suggest that the question of under what circumstances rates and charges for gas service should be increased during this period of national emergency resulting from the war, is one of basic national importance, in which the Office of Price Administration has a substantial interest.

For these reasons, if the Commission please, we ask that we be given the right to intervene. We ask that the Commission waive its rule requiring customary notice and that we be made a party to this proceeding.

Chairman Hankin: Mr. Prettyman?

Mr. Prettyman: Mr. Chairman, we have no objection to the waiving of the rules with regard to notice. It is true, as Mr. Booth has just said, we received notice only a very few minutes ago. Mr. Booth was kind enough to call me on the telephone and tell me about it. However, we do not want to be in the position, by waiving notice, of assenting to the proposition that the Office of Price Administration has an actual place in a proceeding of this sort or that they have any function to perform in a proceeding like this. That is a matter for the Commission to decide upon the petition. Also, we do not want to be put in the posi-

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tion of conceding any of the statements of fact that are in the petition, particularly in regard to the increase being based upon an estimate of taxes, because there is no estimate of next year's taxes involved. The computation relates to the actual taxes paid last year, and even in that view, only one-third of the amount involved here—as a matter of fact about only one-fourth—would in any way be affected by the treatment of taxes, even if all of the taxes were thrown out.

Mr. Harrison: If the Commission please, Mr. McNamara is in the hearing room, and—

Chairman Hankin: Are you going to speak on this particular question?

Mr. Harrison: No, I was just going to refer to another appearance. I am sorry.

Chairman Hankin: The Commission rules that the requirement in the rules that a petition for intervention be filed within five days before the hearing, will be waived in this case, and the Office of Price Administration will be granted leave to intervene—the Administrator will be granted leave to intervene in this matter.

Mr. Keane: I do not wish to file a petition to intervene but I would like to have the record show that the Dis-
478 trict of Columbia Gas Employees Union is represented in the hearing by counsel. I do not wish to take an active part but I would like the record to show the Gas Company Union is represented by counsel.

Chairman Hankin: By counsel?

Mr. Keane: Yes.

Chairman Hankin: Who is counsel?

Mr. Keane: I am, John Keane.

Chairman Hankin: You are a member of the Bar?

Mr. Keane: Yes, sir.

* * * * * * * * * * *

482 Chairman Hankin: Prior to this hearing, this Commission, on August 14th, held a prehearing conference with representatives of the Washington Gas Light Company. The conferees at that conference representing the Washington Gas Light Company were Mr. E. Barrett Prettyman, Mr. Robert C. Owers and Mr. O. H. Ritenour, and for the Commission the conferees were Mr. McElfresh, Mr. Falk, Mr. Nicholson and Mr. Harrison.

These conferees concluded that they wished to bring up at this hearing, questions relating to the following items:

1. Contribution to the National Capital Committee;

2. Depreciation on appliances on display;

3. Transfer from sales promotion to merchandise and jobbing;

4. Treatment of expenses of financing not carried out;

5. Contribution to United Service organizations;

6. Treatment of excess profits taxes;

7. Adjustment on account of rise in cost of fuel, the issue being as to what inventory figure to use in making the adjustment.

483 In addition, at the prehearing conference, a number of questions were raised, and on April 17th I addressed a memorandum to the Commission stating what additional questions would be raised in this hearing and specifying the items which would constitute the subject of the hearing. I should like to read this memorandum into the record so that we will all know what these items are.

In addition to the seven questions raised by the conferees at the prehearing conference held on Friday, August 14th, I desire to raise a number of additional questions, some of which will require testimony, while others raise only questions of law.

1. In the rate base of July 1, 1941, excluding working capital, there is included an item of $1,055,549.52, representing the difference between the appraised value, as of June 30, 1935, and the original cost. All other items representing plant account are substantially the book value and are treated as the original cost in the proposed reclassification under the Uniform System of Accounts.

Query: Should the $1,055,549.52 be retained as part of the rate base?

484 This question does not require the taking of testimony, unless it should be decided that the $1,055,549.52 be excluded from the rate base. If it is decided that it should be excluded, then an opportunity should be afforded to the company to establish that the excess appraisal value over and above original cost is less than this account.

Refrigerators	$60,424.50
Househeating appliances	167,441.47
Househeating appliances—Utilization Dept.	1,727.08
Commercial appliances	33,697.68
Commercial appliances—Utilization Dept.	59.14
Commercial appliances—Government Sales Dept.	442.92
Other appliances and miscellaneous (ranges and water heaters)	135,518.60
Other appliances and miscellaneous (ranges and water heaters)—Utilization Dept.	25.38
Maintaining Installations	41,478.05
Distributed to Washington Gas Light Company of Montgomery County, Maryland	(51,716.48)
	$389,098.33

Query: Are these items properly chargeable to the Company's operations as a public utility, or are they really expenses of the Company's appliance business? This is a question which will require the taking of testimony in
485 order to afford the company an opportunity to show that any or all of these items are properly chargeable to its sale of gas.

3. Sales Promotion Expenses are charged in the amount of $216,072.27, including the following items:

Supervision	$83,577.50
Salaries and commissions	92,901.74
Demonstration	20,840.46
Advertising	49,794.81
Miscellaneous Sales Expense	27,636.37
Distributed to Washington Gas Light Company of Montgomery County, Maryland	(31,330.38)
	243,420.50
Adjustment by P. U. C. staff	27,348.23
	$216,072.27

The following questions are raised with reference to these items:

(a) Are promotion expenses properly chargeable to the consumer?

(b) Assuming that sales promotion expenditures are permissible as charges against the consumer, are these particular expenditures properly chargeable to the consumer?

(c) Are any of these expenditures really chargeable to the Company's appliance business?

486 If the first question is answered in the negative, then there is no need of taking any testimony. If it is answered in the affirmative, then, of course, it is necessary to take evidence.

4. Among the items of Administrative and General Expenses, there is included a classification of General Officers and Executives. Among these, it appears, the President of the Corporation was paid $31,666.59, the Vice President and General Manager $18,000, the Vice President and Treasurer, $15,000.00, the Assistant Vice President $8,800.00, the Comptroller $8,561.54, and the Secretary $6,600.00; also the Budget Director at the rate of $700.00 per month, the Executive Assistant $500.00 per month, the Auditor $458.32 per month, and the Chief Accountant $450.00 per month. In addition, the General Counsel of the Company, not employed exclusively by the Company, is paid at the rate of $18,000 per year. These officers and employees of the Company render services both to the public and to the stockholders. The question involved is whether there should be a division between the rater-payers and the stockholders, in the payment of these salaries, and, if so, how much should the rate-payer be required to pay.

487 5. There is charged an amount of $38,198.62 for employees welfare, including the following items:

Group Insurance Premiums		$27,378.32
Miscellaneous		
Two-thirds of Safety Department's Expenses	$8,729.02	
Salary of Band Leader	1,200.00	
Quarter-Century Dinner	542.19	
Bowling Team Expenses	150.00	
Medical Examination to determine fitness for service	26.00	
Miscellaneous	173.09	10,820.30

In the same category as the above belongs an item of $20,592.32 for pensions, and a payment of $5,000.00 to Towers, Perrin, Foster & Crosby for personal services in relation to employees' retirement plan study.

The question here involved is whether any, or all, of these expenditures are properly chargeable to the Company's business of selling gas to the public, or whether they are the type of charges which should be borne by the company itself.

6. Among the miscellaneous expenses are items as to which the question arises whether the expenses are
488 incurred solely for the benefit of the stockholders, and whether the rate-payer should be required to pay any part of these expenses. These are:

Trustees and Transfer Agents' Fees		$13,436.44
Reports to stockholders and expense of stockholders' meetings		1,748.13
Treasurer, New York Stock Exchange—annual fee		375.00
American Bank Note Co.—Imprints on stock certificates		205.85
Dividend notices:	$70.31	
	68.11	
	69.09	
	70.07	277.58

Some of the items of expenses are in the nature of contributions, which property should be charged to the company, rather than the rate-payer, on the theory that the company should make its own contributions for charity, rather than to contribute other people's money. These are:

Tickets to Police and Fire Outing	$10.00
Tickets to Police and Fire Field Day	30.00
Tickets for representatives of the Company to dinner for retiring Sup't of Police	50.00;
also to educational institutions:	
Institute of Gas Technology	$1,668.30

489 7. The reasonableness of certain membership dues or subscriptions to publications should be justified by the company; for example:

Association dues	$5,985.15
American Management Association	100.00
U. S. Chamber of Commerce	150.00
National Association of Manufacturers	100.00
National Industrial Information Committee	250.00
Merchants and Manufacturers Association	50.00
Better Business Bureau	225.00

8. Of the total taxes paid by the company, in the sum of $1,099,333.63, a question is raised as to the propriety of charging the following taxes to the rate-payers:

Federal Capital Stock Tax	$35,400.00
Prince George's Capital Stock Tax	70.50
Maryland State Capital Stock Tax	1,779.18
County Capital Stock Tax	10,905.43
Federal Income Tax	$598,733.86, of which 63,663.79 is Excess Profits Tax
District of Columbia Income Tax	48,763.81

(The foregoing figures are prior to allocation and
490 adjustment.)

In this connection, a question is also raised concerning an expenditure made to Stone and Webster for services and expenses of K. P. Teele for Excess Profits Taxes, in the sum of $439.05.

The sliding scale plan adopted by Order No. 1458, does not contemplate that the rate base be inflated or that items may be improperly charged to operating expenses. Ordinarily, it is the duty of this Commission to scrutinize carefully all elements entering into the rate determination. With the adoption of the sliding scale plan, the duty of care is still greater. We are determining rates which will be effective not only until the next hearing, but which will have their effect on many years to come. Furthermore, with the rate base determined (once it is properly determined), and with no substantial questions relating to operating income, our task is greatly simplified. Therefore, we must, under all circumstances, pay special attention to the items of expense.

Although the order of investigation was issued last March, and the Commission's staff was supposed to scrutinize all items of expense preparatory to the hearing, the Company's books for the test year ending June 30, 1942, were not completed until this month. The members of the Commission had no opportunity to acquaint themselves with any part of this case until the day before the prehearing conference. To rely merely upon the report of our accounting staff as to the rate base, operating revenue and operating expenses would mean that we are divesting ourselves of the rate-making function very substantially. We might as well let our accountants determine the rates.

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But there is still another reason why we should, at this time, redouble our efforts to prevent rate increases resulting from improper charges as operating expenses. We are now at war. Congress and the Executive have decreed that our war effort requires the prevention of further unwarranted increases in price. This has been done, in part,

by the enactment of the Emergency Price Control Act of 1942. While utility rates are exempted by this Act, this exemption was made, in my judgment, because it was assumed that the regulatory agencies would exercise the closest scrutiny over rate increases, and that this policy of the National Government would become one of the dominant principles determining utility rates in war time. I believe that it is the obligation of this Commission to scrutinize to the fullest possible extent all requests for rate
492 increases.

I do not believe the previous inclusion of unwarranted items in the rate base and the fact that many of the items of operating costs have been accepted as a matter of course in previous years preclude an independent review of them at this time. I believe that counsel for the company, at the prehearing conference, agreed that the Commission is not precluded from reopening such questions as it believes necessary in the discharge of its obligations under the law, which is the correct law in this matter.

Mr. Prettyman: If the Commission please, at the conclusion of the prehearing conference, I requested a statement of the questions which would be raised, a formal statement of those questions, in order that the company might determine what procedure it would follow and what requests it would make, because the questions at that time were asked orally and only rough notes were made.

I might say we had not had a copy of the memorandum which you have read and did not know about it until you read it, but the questions relate to the same subject matter that the questions related to as were asked at the prehearing conference.

These questions raise a great many questions of
493 procedure. In the first place, the first question as to whether the rate base as stated in the sliding scale order should be amended to eliminate $1,000,000, we think, has no place in this proceeding. This proceeding was brought under an order which contemplates the determina-

tion of rates and charges pursuant to the sliding scale arrangement. The item to which the question is directed is an integral part of the sliding scale arrangement. So we think if the Commission is going to inquire into that question, as to whether the $1,000,000 should be included in the rate base, a proceeding should be brought directed to the question as to whether the rate base included in the sliding scale arrangement should be re-examined.

As soon as that question is raised, a great many questions then arise. The sliding scale arrangement rests principally on three propositions—three phases, I might say, or factors, the rate base, the depreciation and the rate of return. Those three together make a composite. As soon as you question one of them—if the Commission is going to raise a question as to one of them—it immediately raises the question as to the continuation of the sliding scale itself, and the company and the Commission would have to determine whether
494 if one of those elements is to be changes, they wish to abrogate the sliding scale, or go on with it.

In the next place, the question as to that item raises a great many questions of evidence and fact. The record, as the Commission knows, was taken over a good many years, relating to the property of the company, valuation, and so forth, which proceeding terminated in the sliding scale order. Obviously, if the question as to the figure at which land should be included in the rate base is to be re-examined, that old record will have to be re-examined and new evidence will have to be taken.

Now, because I am of the view that this question as to land goes to the sliding scale order itself and therefore should be raised in another proceeding, because this proceeding by the terms of the order is for determination of rates and charges pursuant to the sliding scale arrangement, I submit a motion that the question be stricken and ask for a ruling on the motion.

Mr. Stevens: On the question of the rate base, may I point out that you gentlemen are all familiar with the

Smythe and Ames cases, and the general law on the subject of valuation. This Commission in valuing the properties of the Washington Gas Light Company in its Order No. 1341 of March 19, 1935, gave consideration to original cost, reproduction cost new and depreciation. Now,
506 when the sliding scale rate base was arrived at, it was decided by the conferees, by the two parties to the agreement, that the rate base of $21,000,000 should for purposes of bookkeeping and accounting, be as near original cost for the physical property other than land as was possible. You will of course appreciate that from the standpoint of regulation and the company's operations and bookkeeping, it was very much better to put at least part of the rate base on original cost. The company was very careful at that time to say that because a certain part of the base was on an original cost foundation, it did not mean that in the normal valuation and rate procedure it was willing to go forward with that kind of a rate base, and the Commission at the time was thoroughly familiar with the position of the company.

Now, the land item was based on the actual finding of value made by the Commission. The Commission made a finding in its Order No. 1341 of the value of the company's lands. That value was less than the appraised value which was testified to by the witnesses for the company and by the witnesses for the Commission. In other words, the Commission found a value which was less than either.

Now, that land was acquired, a good part of it, be-
507 tween the organization of the company in 1848 and 1870, during a period when land values were so different than they are today in the City of Washington there is no comparison whatsoever, and it seemed to the Commission and to the company that the fair part of the rate base to be founded upon land should be founded upon the appraisal made of that land by the Commission. Mind you, the company was not satisfied with that appraisal. The Commission had appealed from the valuation and the com-

pany had good reason to believe the courts would have upset the Commission's appraisal; nevertheless, in the interest of getting on, this rate base was fixed on the Commission's own appraisement of this land. At no time, as far as I know, have the courts taken the position that original cost should be the rate base. I hope that answers your question, Mr. Hankin. If it does not, I will be glad to go further.

Chairman Hankin: Mr. Booth?

Mr. Booth: If the Commission pleases, this issue which has just been discussed, presents the fundamental question as to whether the Commission is precluded from giving consideration to the effect of war conditions upon the sliding scale arrangement and of the rate of return and the other fundamental aspects in determining whether or not
508 an increase in rates should be granted. I think that we ought to be heard upon the question.

It is true that the sliding scale arangement may be a very valuable device in fixing rates by a regulatory agency. However, the Commission in its 1935 order, clearly indicated that by entering into this arrangement it could not divest itself of jurisdiction to fix fair and reasonable rates, and I assume by that, in giving consideration to every important and necessary factor upon which fair and reasonable rates should be considered.

Moreover, on page 2 of its order the Commission, it seems to me, recognizes that the arrangement would have to be of a flexible character in order that it might give consideration to conditions as they might change from time to time.

In that connection let us consider first of all the question as to what is a fair rate of return. It may be that 6½ per cent after the payment of all expenses including taxes, may have been a fair rate of return in 1935 when this arrangement was entered into, but I think that the courts have held time and time again that what is a fair rate of return in one year may not be a fair rate of return in another year if economic conditions change. So it seems to me that here, with the company admitting that on its own figures

509 it is earning approximately 5 per cent after the payment of all expenses, including an allowance for all Federal income and surplus profits taxes, I think there would be a very serious question as to whether or not in view of the economic conditions which the nation faces today, the World war and the program of the Government to stabilize prices and prevent increases in the cost of living, whether or not a return of that character should not be considered adequate, at the same time giving due consideration to the obligation of the Commission in carrying out the sliding scale arrangement entered into with the company.

All we would like to do is to have a reasonable opportunity to present to the Commission the issues which we think the Commission ought to give basic consideration to before making an adjustment in the rates which the company seeks in this case. We do not want to delay this case undnly, but the facts were first called to our attention last Friday at the informal prehearing conference and we would like to have a reasonable opportunity to present our views to the Commission as to how we think the effect of the war and the program of the national government to prevent further increase in the cost of living, should
510 affect the determination which the Commission must make in this proceeding.

Chairman Hankin: Mr. Harrison, do you want to say something on this question of rate base?

Mr. Harrison: I do not have anything to say on that unless the Commission wishes to know my views on the subject. The rate base has been determined, as I understand it, and as the Chief Accountant will testify, according to the sliding scale plan that he understands it. I might say on the question of whether or not the rate base should be changed, I do believe that is one of the fundamentals in the application of the sliding scale plan, and on the question of the rate of return, since that question was raised, I would like to speak from recollection on that point as relates to the change in the rate of return of the Potomac Electric Power Company. My recollection is that was made the

matter of investigation by the Commission's order. Now, I distinctly remember when the question of the rate of return of the Washington Gas Light Company was first raised about two years ago, the Commission did include that matter because it was one of the basic elements in the sliding scale plan, in its order of investigation, and because of certain events the Commission deleted that one item in
511 the notice of hearing. So that the notice of hearing, as in this case, related only to the determination of the available amount for return and available amount for decrease or increase in rates, as the case may be.

Chairman Hankin: Mr. Prettyman, you covered only the first question I raised. Do you want to proceed with the other question?

Mr. Prettyman: I can, yes, sir. I have a motion before the Commission, of course, on that particular question.

Chairman Hankin: You may have an additional motion. We will act on those motions in executive session.

* * * * * * * * * *

V. A. McElfresh,

558 called as a witness on behalf of the Commission, having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Harrison: Will you state your name and position, please?

Mr. McElfresh: V. A. McElfresh; Chief Accountant for the Public Utilities Commisssion.

559 Mr. Harrison: Mr. Elfresh, as Chief Accountant have you had supervision over the matter of investigation of accounts of the Washington Gas Light Company and the Prince Georges Company for the purpose of this hearing?

Mr. McElfresh: Yes, I have.

Mr. Harrison: Will you state in a somewhat detailed manner the method of investigation, how thoroughly it may have been done, and the manner in which it was done, and

the number of men engaged and the approximate time, by some measure that you may have as to the detail and completeness of the examination of the records of the companies?

Mr. McElfresh: It has been the practice in examining the books of the Washington Gas Light Company and the Prince Georges Gas Company in connection with the determination of the amount available for increase or decrease of rates under the sliding scale arrangement, to make a fairly detailed audit of the operating expenses of these two companies as well as a spot check of conditions of the plant and retirements of plant that entered into the determination of the rate base.

Certain of the operating expense accounts are reviewed only to the extent of making comparison with prior years.

We endeavor to investigate as many accounts in
560 detail as possible.

On the question of services on customer premises for this particular year we did not make a detailed examination of the items included in this account. We have on prior years, and when I was an accountant working on this job I, myself, have made detailed examinations of the charges to this account.

The particular purpose of this detailed examination was to see whether or not the items included in this account related to the gas business of the company or to the appliance business.

Production expenses are examined in much the same manner as this account has been examined this year. There is little possibility for controversial items in production accounts.

Sales promotion expense were for this year, and for as long as I have had any knowledge of the audit of the books of this company, reviewed in considerable detail, with again the specific purpose in mind of determining the propriety of the charges included in these accounts, again with particular reference to whether or not they apply to the gas utility business or to the appliance business of the company.

Administrative and general expense are also gone into very thoroughly, because it is here that controversial items are apt to appear. Such items do appear and from
561 time to time are brought to the attention of the company by the accountants on the job, and as the company concedes these points the books are corrected and nothing further is done about that item.

I might say that in this year on sales promotion expense we discovered a misclassification of an item of $1,124.34 covering newspaper advertising which the company had charged as institutional advertising, and that the accountants felt properly belonged as general advertising.

General advertising covers advertising of appliances, and the practice of the company has been to charge 20 per cent of such general advertising to the appliance business of the company.

This correction was made on the books and we feel it is now in accord with the classification.

Mr. Harrison: At that point, that item, therefore, did not find its way in any of the exhibits that you will present later on as showing the adjustment in the accounts of the company, did it?

Mr. McElfresh: No, it did not.

Mr. Harrison: Because that is a matter that has been pointed out by policing of the accounts?

562 Mr. McElfresh: That is correct.

Mr. Harrison: And that is illustrative of the policing you perform over the accounts of the company in the course of this investigation?

Mr. McElfresh: That is right. I could go on at length along that line.

I believe you asked also a question of the extent of the audit in so far as time is concerned.

Mr. Harrison: Yes, I wanted to ask you particularly if you won't go into the extent of the investigation as to this service in connection with consumer premises.

Did you have anything more to say about that?

Mr. McElfresh: No, I think the distinction I have made about covers all I can say on that at this time.

There were two accountants engaged on this job; one of them, Mr. Falk, started on this work on March 30th. Mr. Nicholson started on March 26, and they have been engaged continuously on that from that time up until the present time.

The latter part of July, when the work increased due to summarizing the analyses that had been made, two other accountants were assigned to this job, one on the
563 23rd and one on July 30th.

All told Mr. Falk and Mr. Nicholson and the two other accountants have put in 1,927 man hours regular time on this assignment and 193 hours overtime, making a total of 2,110 man hours.

Mr. Harrison: Let me ask you about another police item.

It was earlier stated that the issue which we thought was still existing on August 14 related to depreciation on appliances on display and on loan. Will that adjustment be found in an exhibit which you will present?

Mr. McElfresh: Yes, that adjustment is recorded in our exhibit.

Mr. Harrison: But that is one of the items that was not corrected by the company until the case came on for prehearing?

Mr. McElfresh: That is right. There are several other items in that category that have been called to the attention of the Company that did not make material difference on the results because they were only misclassification in so far as the particular primary accounts were involved, and these errors in classifications were called to the attention of the Company and they have agreed to change their procedure in the future with regard to items of this nature, although we did not deem it of sufficient importance to have a transfer made from one primary account to
564 the other.

Mr. Harrison: Where corrections of that sort are made by the company, upon the matter being called to their

attention by the accounting department of the Commission, and the corrections are made accordingly, that matter itself would never be brought to the attention of the Commission or to anyone else, would it, except the company?

Mr. McElfresh: Not in the ordinary course of events.

Mr. Harrison: And therefore the issues left today are to practices or accounting errors, as they may be, in which the company would not agree to your interpretation of the classification of accounts or the appropriate items of account to be charged?

Mr. McElfresh: That is correct. Before we leave that subject I would like to call attention to one other item that has to do with the rate base in the amount of $25,497, covering the painting of a holder of the Prince Georges Gas Company.

This holder was not painted at the time it was completed and the contractor had a fixed price to complete this holder, including paint, and there was an amount of about $6,000 still due on the contract, but the original contractor did not paint the holder, and a separate contractor was
565 hired for the painting, and that cost of painting was $25,000.

Mr. Falk questioned the propriety of including that item in the rate base at this time, pending a determination of whether or not the contractor would be liable for the difference between the $6,000 still due on the contract and the $25,000 paid to the outside contractor.

Mr. Harrison: Has there been a disposition of that item?

Mr. McElfresh: That item is in suspense and not in the rate base at the present time.

Mr. Harrison: Will your exhibit show an adjustment for that item?

Mr. McElfresh: No, that was adjusted on the books.

Mr. Harrison: As a result of the investigations which you have detailed at some length, have you had prepared or has there been prepared under your supervision exhibits which will show the amount available for return and the net amount available for increase or decrease in rates, in accordance with the sliding scale arrangement?

Mr. McElfresh: Yes, I have prepared such an exhibit.

Mr. Harrison: We now offer that exhibit, Mr. Chairman, as Exhibit No. 1.

I might add it consists of six schedules.

566 (The document referred to was received in evidence as Commission's Exhibit No. 1.)

Mr. Harrison: I would like to make this statement for the benefit of those who get certain copies.

Mr. McElfresh will call attention to the entry.

I offer the original copy of this for the record, in lieu of this one, and call attention to the fact that the copies being distributed do not have the last entry in the amount of $1,592.25, being a carry-over item from the 1940 rate case, which Mr. McElfresh will explain.

Mr. McElfresh: This $1,592.25 was the amount available for decrease of rates found by the Commission in its order 1921 on the 1940 rate case and was ordered by the Commission to be held available for future rate reductions.

Since there was no rate reduction under the sliding scale arrangement of last year, that is, the year 1941, this item is still available for decrease of rates, so we have used it here to reduce the deficiency in return which is available this year for an increase in rates.

The deduction of this item from the last figures shown on Schedule 1 of $326,310.31 produces an adjusted amount available for rate increase of $324,718.06.

Mr. Harrison: Before you start further explana-
567 tion of Exhibit 1, Mr. McElfresh, I shall ask you whether or not the schedules in Exhibit No. 1 are made in the light of and in accordance with the sliding scale plan as you understand it?

Mr. McElfresh: That is correct.

Mr. Harrison: Will you explain Exhibit 1 in such manner as you may think appropriate, bearing in mind, of course, that we have already offered a stipulation as to the facts except in regard to the items in dispute.

Mr. McElfresh: Well, briefly, Schedule 2 shows the development of the rate base starting with the unweighted

rate base found as of July 1, 1941, and adding to that the weighted net additions during the test year.

There are also a couple of adjustments there, elimination of contribution in aid of construction during test year, and deposits for main extensions.

There was also included in this rate base each working capital, materials and supplies, determined in accordance with the provisions of the sliding scale arrangement. The rate base amounts to $28,088,331.57.

Schedule 3 covers the operating revenues of the company, both from the sale of gas and from other sources, after adjustments, one of which was a controversial issue
568 originally that has been conceded by the company, and amounts to $8,918,656.27.

Schedule 4, the adjusted operating expenses of the company, the first column shows the expense broken down by major groups and reflects the amounts reported on the books as operating expenses, retirement expense and taxes.

The second column covers the accounting adjustments in the amount of $251,790.19.

The third column is the net of the first two, and the fourth is the portion of the operating expenses after adjustment allocated to service outside the District of Columbia.

The final column totals $7,417,941.76, and is the adjusted operating expense of the company applicable to gas service in the District.

Schedule 5 consists of four sheets and gives the detail of the accounting adjustments that have been made and that are reflected in Column 2 on Schedule 4.

Mr. Harrison: Those adjustments will be found involved in the controversial issues?

Mr. McElfresh: Yes, they will include those items in controversy as well as other items conceded by the company.

I might add that the first item on Schedule 5 relates
569 to the adjustment of miscellaneous operating revenues on Schedule 3.

Mr. Harrison: If that completes your statement of Exhibit No. 1, then—

Mr. McElfresh: (interposing) There is a further schedule, Schedule 6, which is the comparative statements taken directly from the books of the company without adjustment or allocation.

This schedule shows cost per MCF operating expense applicable to gas service, and I think the revenues are broken down by MCF figures.

. . . . . .

580 *Cross-examination.*

Mr. Prettyman: How many years have you been accountant on the Public Utilities Commission staff?

Mr. McElfresh: I came with the Commission September 1, 1936.

Mr. Prettyman: And has the Commission's staff made examinations of the accounts of this company during each of the years since you came with the staff similar to the one you have described as having been made this year?

Mr. McElfresh: During the year 1936 I cannot answer that, but since that year, yes. I, myself, was engaged in the examination for the years 1937, 1938, and 1939. In 1940 I was made Chief Accountant.

Mr. Prettyman: And you have supervised that examination in 1940, 1941, and this year?

Mr. McElfresh: That is right, sir.

Mr. Prettyman: As I understand it your Exhibit 1 gives the figures assuming that all the issues in dispute,
581 as specified by the conferees, were decided against the contention of the company?

Mr. McElfresh: That is right.

Mr. Prettyman: Have you seen the reconciliation that I believe was prepared by Mr. Ritenour of the Gas Company, in which he reconciles the figures in your exhibit with the figures that would result if the various points in dispute were decided in favor of the company's contentions?

That was a pretty long question, but I am asking whether you have seen that reconciliation.

Mr. McElfresh: Yes, I have a copy of it here before me.

Mr. Prettyman: Have you had a chance to see whether it is correct?

Mr. McElfresh: I think this statement reflects the differences in our exhibit and the company's.

Mr. Prettyman: Will you identify the exhibit which I hand you now as a copy of that reconciliation?

Mr. McElfresh: Yes, it is.

Mr. Prettyman: Will that be marked Exhibit 2?

(Exhibit No. 2, marked for identification.)

Mr. Boothe: I assume, Mr. Prettyman, you will have a witness who can sponsor the exhibit if I should decide
582 to ask him some questions about it.

Mr. Prettyman: Oh, yes. I didn't intend to put him on the stand, but he is here if you want to ask any questions.

Just one other matter, Mr. McElfresh. You spoke about the pyramiding effect of allowing a deduction for excess profits tax in computing the rates for next year, and you stated, I believe, that that practice would cause more revenues and more excess profits tax, and so on, in the pyramid. That would not be true if the increased rates did not bring the net income of the company up to the amount of the excess profits credit, would it?

Mr. McElfresh: No, it would not. That statement was based on the assumption of a static condition if there was excess profits revenue.

Mr. Prettyman: But if the increased income resulting from increased rates still didn't bring the company up to the excess profits credit, under the act, in effect we would not have the pyramiding effect you have mentioned?

Mr. McElfresh: No, you would not.

Mr. Prettyman: I have no further questions.

Mr. Harrison: I don't know whether the Commission would like to have in this record by reference the

583 record made—just now I don't have the formal case number—but in so far as it might affect the matter of the promotion of use of gas the Commission might find it helpful to have the statistical information in the record relating to the authorization to increase the capital stock of the Washington Gas Light Company, as well as the sale of the $5 preferred stock which was recently authorized.

I am willing to offer that those records be incorporated hereby references, if the Commission—

Chairman Hankin: What is the significance?

Mr. Harrison: They just might have some information that the company might wish to review or think of in connection with certain issues that have been raised, outside of the issues raised by the conferees.

I merely make the offer, and if the Commission thinks it is not helpful then I will withdraw the offer.

Chairman Hankin: Have you in mind specific facts stated in those documents?

Mr. Harrison: I have in mind this, that I believe in those records there will be shown a statement of the construction program of the company over the last three years. I think that was involved in the $4.25 stock issue.

584 I also have in mind what I think is in that record, the volume of sales, increase in sales of gas, over the recent years as well as the regular income in balance sheet statements.

Chairman Hankin: If Mr. Flanagan would like to have that can you get it?

Mr. Harrison: Do you have any objection?

Mr. Prettyman: I have no objection to it. I suggest we assign the exhibit numbers by reference.

Mr. Harrison: I guess that can be done. It is part of the Commission's files. I don't have the formal case number, but it is the two cases involving the authorization of increases in capital stock whereby the Commission authorized the company to increase its capital stock by $4.25 shares and the authorization to issue and sell $5 preferred.

Mr. Prettyman: Can we just agree that those are incorporated by reference as Exhibit 3?

Mr. Harrison: That is agreeable.

Mr. Prettyman: That gives us some easy way of referring to it.

(The material referred to was incorporated by reference in the record as Exhibit 3.)

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Mr. Boothe: I would rather defer my major cross examination of the witness, as I intend to develop cer-
585 tain facts from him, until I see what the course of the case is going to be.

However, I would like to ask Mr. McElfresh just several questions at this time.

586 Referring to your Exhibit 1, Schedule 1, Mr. McElfresh, will you state what rate of return the company would earn if the deficiency in return shown on that exhibit is authorized by this Commission.

Mr. Prettyman: I don't understand the question.

The Witness: I take it you mean predicated on the net income available here as shown on the exhibit.

Mr. Boothe: Yes, predicated on Schedule 1, Exhibit 1.

Mr. McElfresh: I don't have that exact figure. I did make a computation on the basis of the exhibit prepared for the pre-hearing conference, Mr. Boothe, and on that basis the return earned would be 6.27 per cent.

That was based on a deficit of 323,000 against 324,000 shown on this exhibit, so the difference in the rate of return would be negligible.

Mr. Boothe: That would be the return earned after all operating expenses and all income taxes except the elimination of excess profits tax.

Mr. McElfresh: That is right.

Mr. Boothe: Which you have provided for.

Mr. McElfresh: Yes

Mr. Boothe: You are not expressing an opinion, by
587 the presentation of these statistics, are you, Mr. McElfresh, that a company rendering gas service in

the City of Washington, D. C., in 1942, when the country is in the war and economic conditions have changed as they have changed in recent years, is entitled to a return of that character.

Mr. McElfresh: No.

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591 Mr. Booth: I would like to defer further examination of the witness until I have had an opportunity to study his exhibit.

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Mr. Prettyman: In order to clear the matter up while we are on the subject, may I ask Mr. McElfresh
606 whether or not in his rate base, the original rate base figure was carried in at cost, that is the additions and betterments?

Chairman Hankin: That does not apply to the original figure that he started out with.

Mr. McElfresh: It applies to net additions since the establishment of the $21,000,000 rate base.

607 Chairman Hankin: And the $21,000,000 rate base includes the original cost of all properties except land which is put in at its appraised valne.

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PROCEEDINGS.

613 Chairman Hankin: The hearing will come to order. The Commission has considered the motion made by counsel for the Washington Gas Light Company to strike the first question raised by the Chairman yesterday, namely, with reference to the $1,055,000 of land value included in the rate base. The decision of the Commission will be announced by Commissioner Flanagan.

Vice-Chairman Flanagan: The question referred to appears on page 15 of the record of yesterday's proceeding and reads as follows:

"In the rate base of July 1, 1941, excluding working capital, there is included an item of $1,055,549.52, representing the difference between the appraised value as of June 30,

1933, and the original cost. All other items representing plant account are substantially the book value and are treated as the original cost in the proposed reclassification under the uniform system of accounts.

"Query: Should the $1,055,549.52 be retained as part of the rate base".

As the Chairman has stated, the Commission met in executive session this morning and Commissioner Kutz
614 and I have ruled that the motion be granted on the ground that the question raised is beyond the scope of the present hearing.

Chairman Hankin: I wish to note my dissent from the ruling of the Commission for the following reasons:

This is a hearing in accordance with the sliding scale plan to determine what should be the rates chargeable to the consumers for the coming year. Whether we decide on this particular question one way or the other, the result will affect the rates which are paid by consumers under the sliding scale plan. Therefore, the question must of necessity be part of this hearing.

The question has been raised, subsidiary to the one I stated, whether in view of the fact that the Commission in 1935 set the rate base at $21,000,000, it is proper in this proceeding to re-examine that rate base in order to have the present rate determined upon a proper base. It has been suggested that a reconsideration of the base rate would not be in accord with the sliding scale plan. I cannot agree with that view. The Commission very carefully stated the limits of its powers with reference to the establishment of, or, rather, I should say, the acceptance of a plan like the one we have before us. The Commission carefully noted
615 that an administrative body such as the Public Utilities Commission cannot vest or divest itself of jurisdiction. The statute imposes upon us the duty at all times to establish and maintain reasonable rates, and of course we cannot in one year fetter the Commission for future years.

Furthermore, the Commission carefully stated in the sliding scale plan, that to endure it must be susceptible of such modifications, both as to substance and form, as the facts or conditions from time to time may require.

The facts and conditions do require an examination of this rate base. First of all, in the hearing which was held prior to the adoption of the sliding scale plan, the amount of $21,000,000 was accepted on the theory that that represented the actual value of the property or book cost of the property. There has been some compromise, perhaps, as to what should or should not be the rate base. Since then, namely, within the test year, a study has been made, a reclassification of accounts in accordance with the uniform system of accounts, and at this time it is known to the Commission that the accounts of the company reflect what one might call an inflation of $1,055,000 over the actual legitimate original cost.

There is another reason why it is proper for the
616 Commission at this time to go into the question of whether this rate base is proper or not. In years past, and even up to 1935 when this rate base was established, there has been the impression of commissions all over the country, including this Commission, that it was necessary, that it was constitutionally necessary to establish a rate base reflecting what is known as the present value of the property, no matter what was the original cost. There was some language in the opinions of the Supreme Court which indicated that that was a necessary thing to do, and so the Commissions have proceeded on that theory on the ground that that was required by the highest authority on questions of Federal law.

Since then the Supreme Court has definitely indicated that it does not make that requirement of a state commission or of a commission like this one in the District of Columbia. While in the case which the Supreme Court decided it was not necessary to decide and therefore the Court did not decide that the actual legitimate original cost must be

the rate base, this much is clear, that under the latest decisions of the Supreme Court, a commission is not obliged to follow what it had thought was the law of the land, namely,
that the present value rather than the original cost
617 should be taken as the rate base.

I think in view of those things we should go into this question.

It has also been suggested that in order to go into this question it would be necessary to have a protracted hearing. I do not agree that is so. The books of the company have always reflected the original cost of the land properties. If that had been an error on the part of the company, then such an error might have been subject to correction in the reclassification of accounts, but that was not an error. It is quite proper and proper accounting practice to include the original cost of property in the accounts and there is very good reason why the company should, for, by including the original cost of the property it does not lay itself open to taxation on the basis of present-day values.

Since this is not an error in the accounting, it is not permissible for the company to revamp its accounts rather than reclassify its accounts under a uniform system of accounts, and therefore there is no need for taking proctracted evidence on the theory that some of the parcels of land—of which in fact there are only two, one having been exchanged
in 1917 and the other in 1921—that on account of
618. these two parcels of land it was necessary to go into
extensive testimony in order to determine the value of the properties which had been exchanged.

For these reasons I note my dissent and shall include the authorities in support of it in my dissenting opinion.

Mr. Prettyman, have you any testimony?

Mr. Prettyman: Swear Mr. Maloney.

Chairman Hankin: Mr. Boothe, did you have something you wanted to say?

Mr. Boothe: I take it if the Commission please, the ruling on this question is not to be considered as a ruling by

the Commission but we will not be permitted to present to the Commission the effect of the Government's war program to stabilize prices to prevent further increase in the cost of living, and the relationship between those factors upon the application of the sliding scale arrangement in this proceeding. The thing that occurs to me at this point is whether or not the Commission's ruling is to be construed as limiting the issues in this case to the sliding scale arrangement.

Vice-Chairman Flanagan: No indeed. As I construe the ruling, we have made, it pertains to the motion made
619 by counsel for the company and that motion alone. Is my statement clear to you, Mr. Boothe?

Mr. Boothe: Yes.

Mr. Stevens: Are you ready for us to proceed?

Chairman Hankin: Yes.

A. J. Maloney

called as a witness on behalf the Washington Gas Light Company, having been first duly sworn, was examined and testified as follows:

. . . . . .

651 Cross-examination

. . . . . .

665 Mr. Boothe: I would like at a later time to go into more detail on the effect of those regulations and restrictions upon your business today, and the expenses incurred by your business today as contrasted with a year ago.

Mr. Maloney: I would be delighted to, sir, at your convenience.

Mr. Boothe: That is all at this time.

666 Chairman Hankin: In other words, you want to reserve further examination of this witness?

Mr. Boothe: Yes.

Chairman Hankin: All right, Mr. Prettyman.

Mr. Prettyman: I have no further questions. Have you?
Mr. Stevens: No, no further questions.

(Witness excused.)

Mr. Prettyman: Will you swear Mr. Ritenour?

O. H. Ritenour

called as a witness on behalf of the Washington Gas Light Company, being first duly sworn, testified as follows:

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669 Cross-examination

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677 Chairman Hankin: Mr. Boothe, have you any questions?
Mr. Boothe: Not at this time.

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687 Chairman Hankin: Mr. Boothe, do you have any questions to ask at this time?
Mr. Boothe: No, not at this time.

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Everett J. Boothby

688 called as a witness on behalf of the Washington Gas Light Company, having been first duly sworn, was examined and testified as follows:

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701 Mr. Prettyman: I have no further questions.
Mr. Harrison: I have no questions.
Mr. Booth: I have none at this time.
Chairman Hankin: All right. Thank you.

(Witness excused.)

Mr. Prettyman: Will you swear Mr. Owers.

Robert C. Owers

called as a witness on behalf of the Washington Gas Light Company, having been first duly sworn, testified as follows:

* * * * * * * * * *

725 Chairman Hankin: Mr. Booth?

Mr. Booth: I would like to reserve cross-examination of the witness, and I will have some questions of the witness.

Does this conclude your direct case, or your testimony?

Mr. Prettyman: It concludes the testimony so far as the computation under the sliding scale itself is concerned.

Mr. Booth: I have stated to the Commission that I want a reasonable amount of time to determine the extent of the testimony we would want to present, and also the extent of the cross-examination I may want to conduct of the witnesses who have presented their testimony.

If this concludes the presentation of the testimony by the Company—

Mr. Prettyman: We have one more witness in regard to the schedule of rates, but this is the end of the testimony so far as the computation is concerned.

Mr. Booth: I would like to reserve cross-exam-
726 ination of the witness.

Chairman Hankin: Mr. Booth, you say you would like to have a reasonable time in which to prepare for the cross-examination of these witnesses, and to introduce your own evidence. How much time would you want?

Mr. Prettyman: Your Honor understands we have one more witness in regard to the schedule of rates before we conclude our part.

Chairman Hankin: We can wait.

Mr. Prettyman: It is all right to determine this now. The testimony we have to present is very brief.

Chairman Hankin: Perhaps you better present that other testimony since the cross-examination is reserved.

(Witness excused.)

Mr. Prettyman: Before we go further I would like to offer in evidence Exhibit 2. Yesterday it was identified by Mr. McElfresh, but I failed to offer it, so I will offer it in evidence as Exhibit 2, identified by Mr. McElfresh.

Chairman Hankin: Admitted.

(Washington Gas Light Company Exhibit No. 2, witness McElfresh, admitted in evidence.)

727 Mr. Prettyman: On the record I should like to state in regard to that exhibit, it shows in one column the company computation which is $382,189, which is the amount available for the rate increase. It is five-sixths of the deficit in the basic term.

The figure of the Commission's staff, shown in the next column, is $326,310 as the amount available for rate increase. The excess is shown in the last column by detailed figures.

Will you swear Mr. Mason?

Mr. Harrison: If the Commission please, I want to call Mr. Prettyman's attention to the fact that Exhibit 2 was prepared before the last entry on Exhibit 1 was made for the carryover amount from the year 1940, which would make a slight difference in the amount available for rate increase as now shown on Exhibit 2.

Mr. Prettyman: Mr. Harrison, you have reference, I think, to your statement yesterday that the figure of $1,592.25 should be deducted from that final figure of $326,310 shown in the column headed PUC Accountants on Exhibit 2.

Is that the item to which you have reference?

Mr. Harrison: Yes, that is the item. You show it in round figures.

728 Mr. Prettyman: I would say the same adjustment should be made in the first column in the Company's figures. In other words, we concede that item would carry over.

Chairman Hankin: We will take a short recess.

(A short recess was here taken.)

729 Chairman Hankin: Mr. Prettyman?

Mr. Prettyman: Swear Mr. Mason:

Stephen S. Mason

was called as a witness on behalf of the Washington Gas Light Company and being first duly sworn and examined testified as follows:

. . . . . .

750 Chairman Hankin: Do you have any questions to ask, Mr. Booth?

Mr. Booth: No, I would like to reserve cross examination of the witness.

Mr. Prettyman: That completes our case, your Honor.

Chairman Hankin: Mr. Booth, you stated you wanted to make a motion.

Mr. Prettyman: May I say in regard to adjournment of the hearing for the purposes of Mr. Booth's cross
751 examination, we want to point out, if your Honor please, that these rates are supposed to go into effect on September 1st, and this order for the hearing was issued last March and the date for the hearing was set some time ago, and the normal operation of the sliding scale arrangement has been known here for a long time. This hearing takes place every year, and we would certainly oppose any extended recess or extended postponement. We think this case is complete and that the order should go into effect.

Chairman Hankin: I have also reserved my questions until after counsel have examined the witnesses.

. . . . . .

759 Mr. Booth: Apparently I did not make myself clear. I said I would like to have an opportunity to have such testimony prepared. I thought I made that clear. That was what I intended to say. Obviously, I could not have any such testimony ready because I did not seek the Commission's permission to intervene in this case until yesterday morning, and the decision to file the petition was not reached until the evening before.

760 I would like to ask Mr. Prettyman one question—perhaps I am wrong—perhaps Mr. McElfresh can answer. Is it true that the computation of Federal income

taxes for the year ended June 30, 1942, for the period January 1 to June 30, 1942, are predicated upon the rate which was in force in 1941 or upon an estimated higher rate, which the people who drew up those figures assumed that Congress would enact in 1942.

Mr. Prettyman: Mr. McElfresh probably knows the answer. The difference including excess profits tax is something like $70,000.

Mr. McElfresh: The income tax rate used in developing the figures on Exhibit No. 1 was 40 per cent for the first six months of 1942, and under Section 6 that same rate has to be applied to the taxable income for the last six months of 1941. So that in effect income taxes for the test year ended June 30, 1942, are computed on the basis of 40 per cent.

Mr. Prettyman: Under the present bill for Congress it would be 45 per cent, would it not?

Mr. McElfresh: I think that is true.

Mr. Booth: Is it true, Mr. McElfresh, that the tax rate under the Revenue Act of 1941 is substantially lower
761 than the 40 per cent calculation used in the test year income and expenses for the year ended 1942.

762 Mr. McElfresh: Yes.

Mr. Prettyman: 41 per cent for the first half of the test year and 41 for the second half. The pending bill before Congress puts the rate at 45 per cent. There is no provision for any further increase.

* * * * * * * * *

766 Vice Chairman Flanagan: Mr. Booth, you have been stressing throughout the interest of the OPA in the effect of income taxes. Did you raise any other issue in the Bangor case—I think that is the one you were referring to?

Mr. Booth: In the Maine case we filed an intervening petition which may have been predicated largely upon the tax issue; nevertheless we asked leave to intervene and I think had the case gone to hearing instead of the Company withdrawing its request for an increase, having intervened I would have taken the position I am taking here, namely, that what we want to do is to review the request for an in-

crease in the light of the basic problems that are raised by the Government's program to keep down the costs and prices.

Vice Chairman Flanagan: What is the attitude of OPA when it finds that the request for an increase is necessitated
767 in large part by increased labor costs and costs of materials?

Mr. Booth: I do not know, but I do know this, that supposedly an inquiry is made of the over-all earnings of the Company before income taxes, not after income taxes, to determine whether or not any hardship would be imposed upon the Company by absorbing increased costs. I do not know whether that rule is applied in every case, but that is the basis for an exception or an adjustment under the general maximum price regulations, namely, whether or not a substantial hardship would be imposed by not making the adjustment sought for, and that is the reason I would like to have more time to review the Company's operations as a whole, to see whether or not any substantial hardship would be imposed upon the Company by not making the increase.

Of course it is the Commission's function to determine that, but by intervening here and asking that the sliding scale arrangement be reviewed in the light of current economic conditions and the problems of the National Government in keeping prices down, we would like a reasonable opportunity to determine just how far we want to go.

Vice Chairman Flanagan: The Commission's action this morning in disposing of the question with respect to
768 the component parts of the sliding scale arrangement, I suppose, can be taken as indication that the sliding scale arrangement itself is not a part of the proceeding. That raises the question in my mind as to whether an intervener should be given the right to analyze for this record the sliding scale arrangement itself.

Now, as to the effect upon the Company's operations for the past year caused by increased operating expenses, ex-

cluding taxes, that is a simple calculation. You do not expect, I take it, to cross-examine to the same extent that this Commission is obligated to cross-examine the entire set-up of operating expenses of the Company—or perhaps you do. I would like to have you so state if you do; but if the main interest of the OPA concerns itself with income taxes, necessarily you would not need a great deal of time to prepare on that question so far as this Company is concerned, would you?

Mr. Booth: I do not think I said that was the only issue. What I wanted was some time to review the record to determine how far we wanted to go.

Vice Chairman Flanagan: Well, the record itself is not very voluminous, and that would not take long.

Mr. Booth: That is right, except, Mr. Commis-
769 sioner, included in the record are the records in a couple of other cases.

Mr. Prettyman: Only a part of them, which I understand is only a matter of five or six pages, and that would not help you in the cross-examination on the issues in this case.

Vice Chairman Flanagan: They consist principally of financial statements in support of an application for refinancing.

Mr. Booth: They probably have some data on the overall financing history of the Company and its growth and its income in the last few years.

Mr, Prettyman: I would like to put a reference to one more case in the record. Mr. Booth referred to a couple of cases in which OPA intervened. There is a reference to a case in the current release before the Indiana Commission. The Commission at any rate discusses the contention of OPA in the rate proceeding and says the question is not increased prices which OPA is interested in, but the determination of a utility rate and that OPA had nothing to do with the proceeding at all.

Mr. Booth: That is not what the Indiana Commission said at all, Mr. Prettyman.

Mr. Prettyman: I would like to supply the exact citation.

770 Vice Chairman Flanagan: What is the citation?

Mr. Prettyman: I think it is the Greencastle case.

Mr. Harrison: There is a reference to that case in the National Association of Utility Commissioners' Bulletin 126, 1942, dated August 15, 1942, which the Commission does have.

Vice Chairman Flanagan: We are not a subscriber to that. What is the case?

Mr. Harrison: It is the Greenfield Gas Company, Inc., and these are leaflets or bulletins sent out by the Association to Utility Commissions.

Chairman Hankin: What did happen in that case, Mr. Booth?

Mr. Booth: I read the quotation. The Commission said that OPA was interested in scrutinizing requests for rate increases before the various commissions to determine whether or not there was any conflict with its program. The Commission said it was very much in sympathy with the national program but said the individual case was an exception and the company was entitled to a rate increase. We did not appear or participate in any way before the Indiana Commission in that case or in any other case.

Mr. Prettyman: The Indiana Commission granted the increase in that case.

771 Mr. Keane: May I make a statement on behalf of the District of Columbia Gas Workers Union?

Chairman Hankin: Yes.

Mr. Keane: Mr. Flanagan raised the question about the three hundred and some thousand dollars in wages. I would like the Commission to know that the one competitor of the Gas Company in Washington is the Potomac Electric Power Company, and that as contrasted to the $169 average wage for employees of the Gas Company, the employees of the Potomac Electric Power Company receive an average wage of $202 per month, and that we negotiated for a period of

about six weeks—and I might say that I am not here at the request or on behalf of the Company, I can assure you. There are some 1200 people in that union. We did our utmost to secure a raise and we did secure one based on another type of sliding scale, that is, the cost index of living, which, as Mr. Prettyman stated, meant roughly a 16 per cent increase in wages, or about $380,000.

Now, my point is this. I know it is always the public who pays in the long run; there is no question about that, but on the other hand there is no reason why the employees of the Gas Company should suffer, either.

772 My opinion of the OPA's function is to fix prices, wages, and ceilings at prevailing scales. You have the Gas Company here in a situation where there return is so limited that they are not able, and you have all of the facts and figures before you, to pay a wage scale comparable to that of the Potomac Electric Power Company. It would be absolutely beyond the realm of possibility. Further than that, matters have been taken before the Board to do away with the welfare, which is certainly an emolument for compensation to the men, the same as their regular compensation. I would certainly like the Commission to go into those facts and think them over when they decide this case.

Chairman Hankin: How would the interest of the employees suffer if we gave OPA reasonable time in which to prepare this case?

Mr. Keane: I do not know what a reasonable time is. I do know this—

Chairman Hankin: Let us suppose we gave the OPA four weeks time in which to prepare their case; how would the interest of the employees suffer?

Mr. Keane: They would suffer to this extent: The longer the effective date is postponed, there is that

773 much less income to the Company, and the employees here are in a situation where they are bound and limited by the income of the Company.

Chairman Hankin: Is your wage computed upon the income of the Company?

Mr. Keane: No, but if you go to a man and say "I want a raise", and he says "I cannot give you any because I am not making any money", you are not going to get it, but if he is making money the chances are you will get the raise.

Chairman Hankin: You are afraid if the OPA prepares its case well, the Company might lose the money?

Mr. Keane: I am not. I see no point—

Chairman Hankins: Then I do not see how your interests would be affected.

Mr. Keane: I was not arguing on the ground of continuing. Mr. Flanagan made a remark about the $380,000 in wages and I did want the Commission to compare the two utilities on the question of wages. I also mentioned the pension and welfare benefits, which are certainly emoluments. As far as the continuance is concerned, that is none of my business.

Vice Chairman Flanagan: I did not pick out labor increase specifically; I mentioned others, exclusive of taxes.

Mr. Keane: But labor was some $380,000; I be-
774 lieve it was more than the rate increase.

Vice Chairman Flanagan: Yes.

(At this point the Commission went into executive session.)

Chairman Hankin: The Commission has considered the request made by counsel for the Office of Price Administration and has decided to grant a continuance of two weeks, and thereafter the case will be called at the pleasure of the Chairman.

Mr. Booth: For two weeks?

Chairman Hankin: Yes, and then the Chairman will determine when to call the hearing.

Mr. Booth: No specific date is set?

Chairman Hankin: No. In other words, counsel will have to be prepared two weeks from now if the Chairman calls the hearing fourteen or fifteen or sixteen days from now; that is up to him; but counsel will have to be prepared within two weeks from today.

Vice Chairman Flanagan: I think it might also be understood that if the Commissioners feel they are ready and you find you are ready before that date, we can call it before the two weeks have expired.

775 Chairman Hankin: In other words, notify the Chairman when you are prepared and then the Chairman will call the hearing.

Mr. Booth: That is agreeable.

Chairman Hankin: The hearing will now be adjourned.

. . . . . .

779 Chairman Flanagan: The hearing will come to order.

Mr. Harrison: If the Commission please, this hearing was adjourned on August 19th, on motion of Mr. Booth, for the purpose of permitting him time for cross examination and presentation of such testimony as he desired to offer. I presume Mr. Booth is ready to proceed this morning with the cross examination?

Chairman Flanagan: Will you proceed, Mr. Booth?

Mr. Booth: Yes, I am ready to proceed. We will call Mr. Owers.

Mr. Prettyman: We do not have anything more to present at this time.

Mr. Booth: I indicated I would be ready today, yes.

Robert C. Owers

called as a witness on behalf of the Washington Gas Light Company, having been previously duly sworn, testified as follows:

Cross Examination

Mr. Booth: Will you state your name, Mr. Owers, please, for the record?

. . . . . .

830 Mr. Stevens: This whole line of questioning is objectionable, Mr. Chairman, because this company is

following the sliding scale and the income taxes are deductible under the sliding scale. The sliding scale states that very clearly.

Mr. Booth: Will you refer me to any provision of the sliding scale arrangement which says that Federal income taxes—

Mr. Stevens: All taxes.

Mr. Booth: What does it say?

Mr. Stevens: Reasonable accrual for taxes. Here it is, page 6 of Order No. 1458.

Mr. Booth: Are you suggesting that that provision intended to impose upon this Commission the obligation without any qualification whatsoever as to whether or not the rates should be increased because the Government should levy higher taxes upon the company and other companies during war time?

Chairman Flanagan: Mr. Booth, just a moment please. I do not think this is the appropriate time for an argument of counsel. With respect to Mr. Steven's remark that the entire line of questioning is objectionable, I cannot agree with that because the O. P. A. was permitted to intervene and one of the main points of their plea for intervention was their desire to go into the question of income taxes.

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. . . . . .

849 Chairman Flanagan: Mr. Booth, I am wondering where all of these questions are leading us. If we attempt at this time to review every transaction that was consummated in prior years—

Mr. Booth: I am not suggesting that.

Chairman Flanagan: It seems we may be getting away from the problem presently before us. If you can get to your point without a review of the operation of the sliding scale arrangement in prior years, I would like to have you do it.

Mr. Booth: Perhaps I ought to tell you the point here and attempt to demonstrate—

Chairman Flanagan: It may be a good idea.

Mr. Booth: The position we expect to take is that the fair measure of the income taxes of the Company for
850 purposes of this rate proceeding would be what the Company was subjected to for income tax purposes in normal years. Now, one measure of that would be the average income tax which was allowed or included as operating expense and properly so between the years 1936 to 1939. That, after all, if the Chairman please, is the base, I believe, upon which normal income taxes are computed under the Revenue Act, and it is only because of that reason, as well as to clear up this tax problem which as we have indicated we have a special interest in, that I find it necessary to go into this question in some detail. It is complicated because apparently the Company did not pay an income tax in 1938 and it was allowed a substantial sum and certain adjustments which are not clear were made in 1939 and 1940.

Chairman Flanagan: What are you primarily interested in? Is it the amount of income tax paid for the calendar year in each of these years or the effect upon the computations under the sliding scale arrangement of including a different amount for income tax purposes?

Mr. Booth: I would say we are interested in knowing what the Company's normal income taxes are and which are allowed and have been allowed for rate-making pur-
851 poses. Yet if it is a fact that income taxes were allowed as an operating expense even though subsequently the Company paid no income taxes—I am not saying that is true because it is not clear from the figures what the situation is—that would be an additional factor which would bear upon the allowance of the claim of the Company for income tax for purposes of this hearing.

Chairman Flanagan: It is obvious that there can be no true comparison between the amount of tax paid for a calendar year and the amount of tax computed for a test year because there was an overlapping included in the test year calculation.

Mr. Booth: But Mr. Owers has stated that an adjustment was made in 1939 and 1940 of whatever it was—maybe Mr. McElfresh can state it more accurately—because income taxes were allowed in the amount of $154,000 for rate-making purposes in 1938 even though subsequently no payment of income taxes was made.

Chairman Flanagan: That may be true and it may require an involved explanation, because as I understand it for the test year ending June 30, 1938, the amount calculated for income taxes would comprise the actual taxes paid for six months and the accrued taxes for another six
852 months. So that is why I raised the question whether we are not getting into extended explanations which for purposes of comparison that you are trying to make may not be very useful. I do not want to preclude you from obtaining whatever information may be helpful to the case, but if you can get to the point a little more rapidly—we have spent most of the morning—and I am not saying this critically—without asking for something which has any direct bearing on the case.

Mr. Booth: I think it has a very definite bearing, Mr. Chairman. I think it is the basis of our intervening petition.

Chairman Flanagan: What is the bearing of the amounts involved in prior years' calculations under the sliding scale arrangement or the explanation of any differences which might have occurred betwen actual taxes paid for a calendar year and taxes used in the calculation under the arrangement? That is the point that puzzles me. If you can clarify it, I will be glad to have you do so.

Vice Chairman Hankin: I wonder if I may ask a question which perhaps will throw some light on the question asked by the Chairman. As I take it, the sliding scale arrangement prescribes that there be allowed reasonable accruals for taxes. Reasonable accruals for taxes does not
853 necessarily mean all of the taxes that are paid, but all of the taxes that accrue if the books are kept on

the accrual basis. Do you keep your books on a cash receipts basis or accrual basis?

Mr. Owers: Accrual basis.

Vice Chairman Hankin: And that is the reason for reasonable accruals for taxes. I take it your view is that reasonable accruals for taxes would be normal taxes, and I notice that for the years 1936, 1937, 1938 and 1939 we had what one might call normal years. Then there was a sudden jump in 1940 and a further jump in 1941 and a still further one in 1942. There is something to account for those jumps in taxes, namely, that they are in fact war taxes, and the question then may arise as to whether the allowance of such taxes, at least the amounts over and above the normal taxes, would be a reasonable accrual for taxes to be allowed under the sliding scale plan.

Is that your point, Mr. Booth?

Mr. Booth: If the Commission please, I think there are two questions there; one, under the law as the courts have laid down in the determination of what are reasonable operating expenses for rate-making purposes, and in my judgment those principles govern the determination of operating expenses for purposes of the sliding scale arrangement

—the mere fact that the sliding scale arrangement
854 says that taxes shall be allowed does not mean all taxes, but such taxes as are proper according to the legal principles governing the inclusion of taxes as an operating expense. In my judgment the law has been pretty well settled, both as to taxes and other items of operating expenses, that only normal expenses are properly allowable for rate-making purposes and that abnormal expenses are excluded.

Mr. Stevens: Now—

Mr. Booth: Just a moment.

For that reason, under that legal principle, the abnormal Federal income taxes and excess profits taxes which the Company is now compelled to pay because the country is in a war and has been levying higher taxes in the last two

or three years, because of war expenditures, those are abnormal expenditures and should be eliminated in this case as well as in any rate case.

In the second place, the inclusion of the full amount of Federal taxes during the war is definitely inflationary and contrary, in our judgment, to the program of the National Government in asking for higher taxes, and it is exactly
855 contrary and in conflict with the program of our office and of the other Federal agencies which are attempting to stabilize commodity prices. Therefore in trying to determine within a reasonable degree of accuracy—I do not believe we can take the time to determine this down to the dollar—what would the Company's normal taxes be for purposes of this case, one measure might very well be the average of the amount allowed during the 1936 to 1939 period, or the average rate that prevailed during that period. But it is in an effort to get somewhat more exact information because Mr. Owers has said that the 1938 figure and the 1939 figure have been subject to adjustments, and apparently rather substantial and not minor ones, that I am trying to ascertain what represents more accurately the income taxes allowed for sliding scale arrangement purposes during those periods and how it was arrived at.

Chairman Flanagan: I presume you will be prepared to submit some evidence or documents explaining how you arrive at what in your estimation is a normal year and what is an abnormal year, to guide us in considering what is offered here?

Mr. Booth: We are planning to do so.

Chairman Flanagan: In the interest of expedition, without trying to rush you too fast, can we have an understanding as to the set-up, that is, taxes paid on a calendar
856 year basis, while they bear some relation to taxes calculated for rate-making purposes, are two separate and distinct figures, and that to attempt to compare an allowance for the test year ending June 30, 1938, let us say, is not a figure which is easily comparable with the taxes

paid for the calendar year 1938. Now, as to whether suitable adjustment was made under the arrangement in succeeding years is a matter for the Commission's records to disclose. I do not see where it has a great deal of bearing in the comparison which you are attempting to make.

Vice Chairman Hankin: Supplementing what—

Mr. Booth: I was just going to say, if the Chairman please, to clear my position, that I would be glad to agree to defer this point for the time being, subject to an effort to clear it up off the record by talking to the Commission's staff or examining what additional data might be necessary. If it appears that there is a reasonably substantial point there, then I will ask it be reopened.

Chairman Flanagan: That is agreeable; I think it will save time.

* * * * * * * * * *

878 Chairman Flanagan: There is one element you have brought out and that is reasonableness. I wish at some time in the progress of your cross-examination, or testimony of your witnesses, you might give a 879 little thought to the question of reasonableness. In other words, from the standpoint of the O. P. A. if no ceiling has been placed on certain types of expenses, does that mean by inference or otherwise that in the opinion of O. P. A. such expenses are reasonable? I have in mind costs of materials and labor costs on which no ceilings have been placed. I think it might guide us if we had some elaboration of the reasonableness aspect of the expenses which are entering into this present case.

Mr. Booth: I see the point and I am planning on direct testimony on the question as to the extent to which it would be appropriate in the light of the Government's program if a utility is to be allowed income tax as an operating expense, what is a reasonable measure of the allowance of income tax as an operating expense in war time, and some of our people are working on that problem and will have something ready, I understand, in a week or ten days.

If the Chairman please, I do not want to make this cross-examination of Mr. Owers any longer than necessary. The question as to whether or not the company is subject
880 to excess profits tax in 1942, with or without a late increase, happens to be a very important matter from our point of view. We have tried to the best of our ability to get from Mr .Owers the exact figures upon which he sponsored the statement in the stipulation that no excess profits tax would be paid by the company in 1942, and as he has indicated and as I have indicated, certain fundamental data which he used in arriving at that conclusion had not been made available to us—

Mr. Prettyman: I cannot let that statement go unchallenged, Mr. Booth, because I do not think it is an accurate statement.

Mr. Booth: He has not said it is fundamental, but it is clear it must be.

Mr. Prettyman: The statement of fact you have made is not accurate. You made a request for certain data and all factual data was furnished you. You asked for the budget estimate for 1942 and we declined to give you that. That was purely estimates made from time to time. Now Mr. Owers stated on the record this morning the facts and figures which directed his judgment there would be no excess profits tax in 1942. He stated it very clearly and carefully and gave you the figures. You tried in cross examination to make him say he used some other figures. He has
881 not used them. He stated at the beginning what he did. That is the state of the record at the moment.

. . . . . .

900 Chairman Flanagan: The question is open as to the date we reconvene.

Mr. Booth: I would suggest next Friday, if the Commission please. We are preparing some direct testimony. It is my hope, after an examination of the record and an opportunity to take up some of these disputed tax problems and computations with the Commission's staff and with the

company, we will be able to get enough facts to clear up this situation as to the excess profits tax liability of the company for 1942. We have no desire to delay the case for purposes of delay. We will try to do the best we can in this period. I want to say that in my judgment this proceeding involves some principles that are exceedingly important and we think we should be given, as I have indicated, a reasonable opportunity to demonstrate the
901 right of the company to an increase in the light of the effort of the Government, of which we all are a part, in trying to keep costs of living down and stabilize prices. I think if it goes over until next Friday we may be able, and at least we will make every effort to clear up the disputed points and get the additional facts into the record in short order.

Mr. Prettyman: If the Commission please, we protest very vigorously any such delay in this case. We have already had a delay of two and one-half weeks during which time Mr. Booth has had an opportunity to prepare whatever he might have to offer material to the issues of the case. The late order under the sliding scale is supposed to go into effect September 1st and that date has passed. The company reads meters daily and those bills ought to go out beginning the first part of next week.

So far as Mr. Booth's statement is concerned, he has not indicated he intends to present any contentions, and certainly no additional evidence that pertain to the issues in this case. If the issue he has in mind is whether the sliding scale should be specified, that is a totally different issue.

The hearing here is to compute the rates of this com-
902 pany under the sliding scale agreement. It seems to me the Commission has been more than generous in allowing him two and a half weeks to prepare. Most of the figures he has asked about today are in the possession of the Commission's staff, and it seems to use the hearing should go right straight forward. We are ready to go forward tomorrow and Monday morning, and we think in jus-

tice to everybody the hearing should go ahead to its normal conclusion.

Chairman Flanagan: Did you mean Monday morning?

Mr. Prettyman: I know it is Labor Day and a holiday, but this is important. The key thing in this whole proceeding is the effort of this company to finance its affairs. It was not able to finance in the spring. It has to finance. As to the O. P. A. and the policy of the Government, Congress did not put the policy in regard to public utility rates within the functions of the O. P. A.. The O. P. A. is here only by courtesy of this Commission. We did not feel it proper to object to the Government coming in, but as to the policy of that Office as to public utility rates, Congress saw fit not to give them jurisdiction over those rates; it is not within their policy, but the policy of this Commission.

If he has anything material to the issues, he has
903 already had two and a half weeks to prepare it, and we do think the Commission has been very generous in allowing him time to prepare and that the hearing should proceed in its normal course.

Mr. Booth: I want to say one thing. There is nothing about our presence here that indicates we have not recognized the jurisdiction of this agency to fix these rates. It is my position, and I expect to elaborate that, that Congress by the exemption of public utility rates from the Office of Price Administration intended that utility rates should be fixed in line with the national problems affecting price control during the war and merely because this company happens to have an arrangement entered into in 1935 does not mean in our judgment those rates can be fixed automatically without regard to the broader national aspects at this time.

904. Now, I think this financing situation is important. I think Mr. Owers, however, made the statement—I do not know it is important—in the earlier case that they did not contemplate a rate increase when they went ahead with their financing problem—

Mr. Owers: I did not make any such statement.

Mr. Prettyman: That is not an accurate statement, Mr. Booth. He stated in the beginning of this year when they proposed to finance—the beginning of last year they did not—but that financing did not go through. That is the key fact. We tried to finance in May and June and failed. Only half of the stock was sold. He testified on the stand if the rate increase went into effect we would be able to sell the stock and finance the company.

Chairman Flanagan: The testimony is in the record and we can consider it on the record.

The Commission would like to go into executive session for a moment to decide this question of adjournment.

(At this point the Commission went into executive session.)

. . . . . .

915 Chairman Flanagan: We will now adjourn until Tuesday morning at 10 o'clock.

. . . . . .

919 Chairman Flanagan: Are you ready to proceed, Mr. Booth?

Mr. Booth: We would like to recall Mr. Owers.

Robert C. Owers

recalled at a witness and, having been previously duly sworn, testified further as follows:

. . . . . .

934 Chairman Flanagan: Mr. Booth, I have prepared a little statement here which might put us all straight. I think that in the interest of all concerned there should be some understanding as to the status of the Office of Price Administration as an intervener in this proceeding. Perhaps this understanding should have been arrived at at the time the petition for leave to intervene was granted, but, as you will recall, this petition was filed at a late date, and the Commission waived its rule that such petitions should

be filed and served not less than five days prior to the date fixed for the formal hearing in a proceeding.

Rule 7.3 of the Commission's Tentative Rules of Practice and Procedure, adopted July 17, 1942, states that the Commission may grant or deny a petition for leave to intervene, or may grant the petition upon such conditions and limitations as it may prescribe.

Rule 7.5 states that the granting of a petition to intervene shall not have the effect of changing or enlarging
935 the issues in the proceeding, except where such change or enlargement is expressly requested in the petition and is expressly granted by the Commission after opportunity for hearing on the question has been afforded all of the parties.

This Commission in effect has already ruled that questions pertaining to basic elements of the sliding scale arrangement described in Order No. 1458, dated December 13, 1935, are not within the scope of the present proceeding. This proceeding is vastly different from a proceeding involving a rate case as that term is generally understood. Rate cases usually involve a tremendous amount of investigatory work, detailed analyses, and a complete review of the operations of the utility involved, sometimes over a period of years. The question of the detailed valuation of property also must be determined in such a rate case. Here all that work was done before the existing sliding scale arrangement was entered into. In every year in which the arrangement has been in effect the staff of this Commission has spent months in making detailed audit of the company's operations. To question a basic element of the arrangement at this time would undoubtedly result in throwing open all other elements of the arrangement for reconsideration. This would obviously lead to protracted
936 negotiations, and the question as to whether another arrangement would be more advantageous or less advantageous to the consumer could not be settled within a period of months. It was not the intention of the Commis-

sion to initiate such proceedings when it called these hearings for the purpose of conducting its usual annual investigation of rates, tolls, charges, tariffs, rules, regulations, and conditions of service of the Washington Gas Light Company under the sliding scale arrangement.

This Commission will be glad to have testimony regarding the aims and purposes of the Office of Price Administration during this period of national emergency, and we are very much interested in learning the attitude of the Office of Price Administration as to the relation of those aims and purposes to the present proceeding. However, we do not feel that the presentation of such views requires that the Office of Price Administration should carry on a detailed investigation into the accounts of the gas company. This has already been done by our staff, which is competent and experienced. It is the duty of this Commission to determine whether the accounting of the company has been performed in accordance with the terms of the sliding scale arrangement. We have the further duty
937 of determining that items entering into the computations made under that arrangement are reasonable.

In conclusion if it appears that the books of the company have been properly kept and that the necessary computations have been correctly made, the Commission will be faced with the question as to whether, in view of the national emergency, the rates and charges for gas service should be increased. It is expected that the Office of Price Administration, as intervener in these proceedings, will develop its testimony along lines which will assist us in arriving at a determination of this question at an early date.

Is that sufficiently clear, or does it need a little elaboration so that you may conduct your intervention with a view to getting before the Commission the present line of thinking of the Office of Price Administration?

Mr. Booth: If the Commission please, we presented our petition for intervention and to be a party to this proceed-

ing, and that petition was granted. The company did not object at that time to the intervening petition of the Office of Price Administration. It had an opportunity at that time to object. By permitting the Office of Price Administration to intervene, the Commission at that time, it
938 seems to me, authorized the Office of Price Administration to make a showing, and an accurate showing, as to whether or not the company should be entitled to a rate increase at this time, not merely in the light of the mathematical provisions of the sliding scale arrangement, but the sliding scale arrangement as construed in the light of the national program to stabilize the cost of living.

Now, we have also said that the question as to under what circumstances rates and charges for gas service should be increased is a national question. Of course, in a sense, we are all part of the national government; but the standard by which we believe we can aid the Commission in determining whether or not a rate increase should be granted is the standard which we apply, and that is the question as to whether or not in the light of all the circumstances which are pertinent to a determination, as to whether or not the company is entitled to an increase, as to whether or not there would be an undue hardship imposed upon the company as contrasted with the consumers, in determining whether or not the company should be entitled to higher rates and normal profits and the other issues in the case.

Now, we cannot determine whether or not a hard-
939 ship would be imposed upon the company without adequate facts. It has not been my intention to try this case as an ordinary rate case, but merely to attempt to develop sufficient facts relating to the more important issues in order that we might be in a position to tell the Commission whether or not under the standards which we think are applicable to this case, a rate increase is justified.

I understand the company is very anxious to push this case along to a conclusion. They have brought Mr. Stev-

ens from New York and apparently it is an inconvenience for him to be here—

Mr. Stevens: Now, just a moment. There is nothing in the record to that effect. Would you like to withdraw that statement?

Mr. Booth: If you will tell me it is not an inconvenience for you to be here, I will withdraw that statement.

Mr. Stevens: That is not the fact.

Mr. Booth: I had not intended to prolong the case. I had hoped to examine the witnesses today; I had hoped to conclude my examination before the end of the day, and I had also hoped to have a reasonable opportunity to present to the Commission such relevant facts bearing upon the
940 application of the O. P. A. program and have the facts presented in this case within a short time. I had hoped to be ready, if not by Monday or Tuesday of next week, to be ready on Friday. But it seems to me the Commission and the company are overlooking the fact that in any determination of rates the Commission cannot be governed by the mere mathematical formulas contained in the sliding scale arrangement, but that that must be applied in the light of legal powers and the legal duty of the Commission to fix fair and reasonable rates in the light of the economic conditions which prevail today and the principles determining what are fair and reasonable rates today.

Chairman Flanagan: That, Mr. Booth, if I may interrupt, was my understanding of the basis on which the intervention of the O. P. A. was granted. I am referring now to your last statement. It was not my understanding that the O. P. A. would have to assume any of the prerogatives or duties of this Commission as to the accuracy or correctness of calculations made under the sliding scale arrangement. That would be a duplication of effort and would prolong this hearing unnecessarily.

Mr. Booth: No, I will not agree with you there, Mr.
941 Chairman. If in my judgment it is clear that a pro-

vision of the sliding scale arrangement has been applied by either the company or the Commission's witnesses incorrectly, and also affecting the question as to hardship in this case, it would be my duty to point it out to the Commission and propose to do so unless prohibited by the Commission.

Chairman Flanagan: There will be no prohibition as to what you may point out. However, the hearing cannot be unduly delayed while you are duplicating work which has been done by our staff which we say is competent and experienced in handling this sort of proceeding.

Mr. Booth: I am not saying that it is not. There is nothing about our participation in this case which casts any reflection upon anybody. We are opposing—

Chairman Flanagan: Could you be a little more specific at this time, Mr. Booth, as to the aims of the O. P. A. in this proceeding and what you expect to develop and how you are now planning to develop those aims?

Mr. Booth: I will be frank with the Commission, as I have tried to be in this case and in every case. I had proposed to develop a few general facts dealing broadly with the question as to whether or not the sliding scale ar-
942 rangement had worked a hardship upon the company during the years in which it has been in operation, and whether or not it had worked out very liberally to the company.

Chairman Flanagan: No claim has been made that it did work a hardship on the company, Mr. Booth.

Mr. Booth: What I propose to show is it works out liberally to the company. This is the first year in which the company over a great many years, including the years of depression, has not earned, apparently, a liberal return. That, it seems to me, is a factor in determining today whether or not it would be a hardship to require the company to continue under existing rates.

As I say, I want to develop a few general aspects on the history of the company's operations under the sliding scale

arrangement. Some of that could be done by direct testimony, which would be brief; some of it could be done by asking Mr. Owers to present a few more facts for the record. I had also wanted to refer briefly to the rates of this company, the proposed rates, as compared with other rates of comparable companies as disclosed by published reports of the Federal Power Commission. I think such a comparison would be very interesting.

943 I had not intended to get into all of the facts of the various issues which have been raised with respect to the company's operating expenses. I had, however, proposed to demonstrate that, giving consideration only to a proper allowance to the company for taxes, and determining depreciation in accordance with the general principles of the Supreme Court of the United States, according to a decision handed down during the last year, which I think is now binding upon this Commission, and that the sliding scale arrangement must be determined in the light of principles laid down by the Supreme Court.

Chairman Flanagan: To what case are you referring, Mr. Booth?

Mr. Booth: National Gas Pipe Line Company of America v. Federal Power Commission and the Illinois Commerce Commission, where the question of determining annual depreciation expense under a sinking fund method was presented, and the Court specifically held that it was improper to apply an interest rate which did not equal the fair rate of return—

Chaiman Flanagan: Just at that point, Mr. Booth, do you happen to have an idea as to the relation of the present depreciation reserve on the company's books to

944 its plant and depreciable property?

Mr. Booth: Yes. Today I think the company has a reserve of approximately $2,000,000.

Chairman Flanagan: Percentagewise?

Mr. Booth: Yes. It happens to be not very high, but I know that they are trying to build it up, and I think it is an

excellent thing that it be built up; but that also runs into the question, Mr. Chairman, as to whether or not it is not a hardship and an illegal hardship, to require the present consumers to pay rates to build up an adequate reserve because the company failed to set aside adequate depreciation charges in prior years. That is another point. All I had planned to do was to deal with the depreciation question and to prepare some summary exhibits showing the actual earnings of the company under the sliding scale arrangement based upon a proper allowance for taxes according to principles which O. P. A. applies and which we think are proper for rate-making purposes, in order to avoid a conflict between the levies of abnormal war taxes in the Government's program and to demonstrate by all of the evidence that is before the Commission that there would be no hardship of any kind resulting if the company was required to operate under existing rates and to indi-
945 cate cases in support of that situation.

Now there is still in doubt, because the company has not yet made available, the question as to whether or not the company would be subject to an excess profits tax if a rate increase was made. The company itself has indicated if an excess profits tax in fact would be levied upon the amount of additional earnings which the company would get if a rate increase was made, that it might be impractical, and they sort of indicated they might agree with Mr. McElfresh's statement on the excess profits tax question.

I think I can show the Commission I am not planning to delay this case, but at the same time I want an adequate record in order to demonstrate whether a hardship would result if the company was required to operate under existing rates.

Chairman Flanagan: You have raised the question of excess profits taxes being incurred because of a possible rate increase being granted. That bothers us, too. The witness, Mr. Owers, has stated that to grant rates which would result in 90 per cent of those rates being turned over to the

Government does not make sense, and in view of that fact I would like to ask Mr. Owers would the company
946 consider some arrangement whereby in the event a rate increase is granted the consumers would be protected against increases in rates which would result in liability on the part of the company for excess profits taxes attributable to such rate increases. Is that a protective arrangement to which the company could give some thought and perhaps eliminate that dangerous point from our mind?

Mr. Owers: If I understand correctly—

Mr. Prettyman: May we have the Reporter real that, Mr. Chairman?

Chairman Flanagan: I have written it out and if you like, you may take this (hands paper to Mr. Prettyman).

Mr. Owers: Did I understand you correctly, Mr. Chairman, that your idea would be an arrangement whereby rates were kept at a level which kept the company under the excess profits ceiling?

Chairman Flanagan: Yes, some method which would obviate the danger which has been brought out in this hearing, which is that an increase in rates might result in imposing excess profits taxes upon the company, with the final result that the consumers were really paying the excess profits taxes through these increased rates. I think
947 that is a rather unusual arrangement, but I would like the company to consider the possibility of adopting such a protective arrangement in the event rate increases are found to be warranted.

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949 Chairman Flanagan: Suppose we leave it this way. It will take some working out, but I would like to have your staff and ours get togther and see if something feasible can be developed for presentation to the Commission.

Mr. Owers: We will be glad to do that.

Mr. Booth: May I ask one or two questions? I assume that this does not mean that the Commission has decided it

would be appropriate to allow the company as an operating expense all Federal income taxes other than excess
950 profits tax?

Chairman Flanagan: The Commission has made no decision as to the inclusion or exclusion of any item as yet.

Mr. Booth: I want to make it clear that our objection to an allowance of an increase in rates applies with equal force to the inclusion of excess profits tax as well as anything over and above the taxes that the company would be subject to based upon normal rates. Apparently there is a difference of almost $250,000 to $300,000, which in effect would wipe out the right of the company to any increase in rates.

Chairman Flanagan: As I said the other day, I have presumed you would develop for this record what in the O. P. A.'s opinion is a normal years and what are normal rates.

Mr. Booth: Correct.

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976 Mr. Booth: That will be all of Mr. Owers. At this time I want to ask Mr. McElfresh a few questions.

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988 Mr. Booth: Let the record show we will attempt to be ready on Friday morning but I will make no definite commitment that we will be, but we will try to be ready on Friday. I want also to point out in view of Mr. Prettyman's suggestion this morning that the case be closed on Friday, that that is within the discretion of the Commission. There are a lot of things here that depend upon the application of legal principles to new problems and we think they are very important and we think the Commission should either allow us 10 days or two weeks after the case is closed to prepare a brief or if the Commission should prefer to have the matter argued, that is satisfactory to me and we would require a shorter time for argument.

Chairman Flanagan: We will have that in mind for consideration.

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989 Chairman Flanagan: We will adjourn until Friday morning at 10 o'clock.

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1029 Mr. Booth: Is the hearing resumed?

Chairman Flanagan: Yes.

Mr. Booth: If the Commission please, I hesitate very much about interrupting Commissioner Hankin's questioning at this time, but because of the Chairman's statement the other day, there is a little doubt in my own mind as to the exact status which O. P. A. now has in this proceeding.

As I recall, at the time that we presented our petition for intervention on the 18th of August, our petition was granted, and may it therefore be understood, and I have a draft order—I don't know that it is necessary—that on the 18th of August the petition of the Office of Price Administration for leave to intervene in this proceeding was, of course, granted, and as was its petition to be a party in the instant proceeding. Is that understood?

Chairman Flanagan: Is to be a party to these proceedings? The Commission did grant leave to intervene.

Mr. Booth: And it was as a party to these proceedings. I recall very specifically that that was the intention of the Commission, that there was no limitation, and in fact at page 302 of the record, Mr. Prettyman stated as follows:

"I stated when I consented to the intervention that
1030 I did not concede those various paragraphs in the petition. Maybe I made a mistake in consenting. If I had known the only thing Mr. Booth was going to do was to raise issues not involved in the case, I might have objected".

Then he talks about the proposition of an intervening party coming into the proceeding when the company and the Commission are fully informed and nevertheless the inter-

vener can ask time to familiarize himself with all of the records of the company. That was the only point he was talking about. Mr. Hankin was presiding at that time and I just want to clear up that the Commission did authorize and grant the intervening petition of the Office of Price Administration.

Chairman Flanagan: Mr. Booth, when I read the statement the other day, it explained that the O. P. A. did come in at the last minute and we permitted them to intervene. That statement was an attempt to clarify what perhaps should have been clarified at the moment we granted the leave. Maybe I can make it a little clearer than it was made the other day.

In my opinion this is not the usual type of rate proceeding. The company did not come in here this year for the first time in several years to request an increase in rates;
1031 they came in here under the sliding scale arrangement which was entered into in 1935, just as they have come in every year since.

The issues can be very easily confused, but to me they are quite simple. This Commission itself must make a decision under the arrangement which was entered into in 1935 whether or not this company is entitled under the terms of that arrangement to a rate increase. That involves a very simple clear-cut question of fairness, nothing more and nothing less, and also involves, in my opinion, the integrity of this Commission, of which I am very jealous.

This must be done, let me emphasize again, under the arrangement as it exists and not as someone would like to have it reconstructed, but as it is presently, and that is the basis on which we called this hearing. That duty is the job of this Commission and that is the job that shall be done.

Now, the second point is, having determined that question we must then consider existing conditions and the bearing of those conditions upon the question before us, and by existing conditions I mean not only existing economic conditions, but the credit standing of this company, the possible

need of funds to maintain the facilities it now has and to
expand those facilities in order that the consumers
1032 might get the service they are now getting or im-
proved service. That is where the O. P. A. comes in, in my estimation, to give us the benefit of their views regarding the granting or refusing to grant a rate increase in view of general economic conditions, to prevent inflation. We are just as interested in that as the O. P. A. is. You have made a study, presumably, and you have something which will be of value to the Commission in making up its mind on the second point. There is, let me repeat, to my mind, a clear distinction and two phases to this whole proceeding.

Does that clarify it in your mind, Mr. Booth?

Mr. Booth: Yes, it clarifies it on the assumption that the petition of the Office of Price Administration for leave to intervene filed before this Commission on August 18th was granted without qualification.

Chairman Flanagan: At the date the intervention was granted there were no limitations prescribed by the Commission; that is true.

Commissioner Hankin: I want to supplement that by saying that was my understanding when I granted, on behalf of the Commission, leave to intervene; that is to say, leave to intervene in accordance with the terms of the peti-
tion for intervention. Otherwise we would have set
1033 forth limitations which would have limited the inter-
vention to specific questions.

Chairman Flanagan: Continuing, however, as I pointed out the other day, our rules of practice provide that an intervener has no right, stating it in language as I understand it, to expand the issues in a proceeding. We have already ruled with regard to a question which in our mind would have expanded the issues. I think the intervention was granted with that same proviso applicable to the O. P. A. as is applicable to any other party.

Commissioner Hankin: I don't know whether the Chairman is aware of the fact that our rule, while it states an intervener may not expand the issues in a case, also provides that he may not expand it without expressly asking for it in the petition for intervention and leave being granted by the Commission. Now, this question of what is and what is not within the issues of the case is a very nebulous one, as I see it. There seems to be quite a difference of opinion. For example, one of the questions that I raised myself was with reference to the rate base, and the Commission held that that was not within the scope of the hearing. I still do not understand how a rate can be computed without
1034 going into the correctness of the rate base, but of course the ruling of the Commission stands.

Then on last Tuesday the Chairman of the Commission suggested a method of reimbursing or the possibility of reimbursing the consumers for any increases in rates which might result in additional excess profits taxes. Well that, of course, whatever that may mean, is not within the scope of the sliding scale arrangement as such. Whether that is within the scope of the hearing or not is a debatable question. But the petition for intervention filed by O. P. A. did raise questions which may be beyond the sliding scale arrangement for which this hearing has been called. Now, if that is the case that petition asked for an extension of issues and the Commission granted the application—

Chairman Flanagan: Just a moment. I may be on thin ice when I dispute questions of law with our learned Commissioner; however, as I recall the provision, and the rules of practice will bear me out, I think, when it comes to expansion of an issue, the request to so expand must be submitted to all parties in interest and they must agree to such expansion.

Mr. Prettyman: I think the rule is perfectly clear.

Chairman Flanagan: Let us quote the rule so
1035 there will be no ambiguity about our remarks.

Commissioner Hankin: Mr. Milligan, will you get the rules?

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1036 Mr. Harrison: If the Commission please, in support of what the Chairman has just stated about the rules in respect to raising new issues, I should like to point out on August 18th, when leave to intervene was granted, that one rule of the Commission was specifically waived and only one rule, and that relates to the requirement that the petition be filed within five days. I find in the record no waiving
1037 of any other rule. It naturally follows, therefore, that the rule as to raising new issues is still in force and effect in so far as this petition is concerned, and that the petition of intervention was received in the light of those rules not waived.

Chairman Flanagan: I would like to call up the point on which we had some discussion a moment ago. Rule 7.5 of the Commission's Tentative Rules of Practice and Procedure adopted July 17, 1942, reads as follows:

"Effect on issues. The granting of a petition to intervene shall not have the effect of changing or enlarging the issues in the proceeding except where such change or enlargement is expressly requested in the petition and is expressly granted by the Commission after opportunity for hearing upon the question has been afforded all other parties."

To me that is simple and clear language and I think we have acted in accordance with that.

Commissioner Hankin: To me it is also very simple and clear language, especially since I had a hand in the drafting of these rules. Nothing in this rule has stated that issues can be enlarged only with the consent of the other parties, as has been just stated by the Chairman. In fact, that was definitely ruled out in the draftmanship of these rules.

1038 Chairman Flanagan: I think the reading of the rule in the record supersedes any remark the Chairman might have made when he was not entirely familiar with the terminology.

Commissioner Hankin: It was also clear to me that here was a petition which expressly requested the enlargement of issues because issues were brought in the petition which are not present in the document known as the sliding scale plan, and when the petition was granted it was granted in all of its particulars, and there was nothing said which would limit the intervener in any part of the case.

Mr. Prettyman: If the Commission please, it seems to me the language of the rule is perfectly clear, and that is, if an enlargement of the issues by an intervener is desired, it must be expressly requested. The rule so states, that it must be expressly requested. Furthermore, it must be expressly granted. There is nothing in the petition that expressly requests any enlargement of the issues, and there is nothing whatsoever said by the Commission that expressly granted an enlargement of the issues.

The Commission permitted O. P. A. to intervene in accordance with the rules. The rule says the intervener can participate as a party, but under the issues as they
1039 were originally set down by the Commission for hearing, unless there is an express request and an express ruling by the Commission. There is no such thing in this case as either an express request or express ruling.

Commissioner Hankin: That, I take it, would require us to look into the petition for intervention to see whether that petition was merely based on the issues involved in the sliding scale plan or whether there was anything that goes beyond it.

Mr. Prettyman: Absolutely not. It would require the Commission to look at the petition to see if there is an express request. The ruler states in perfectly plain English words that if there is no express request, then the granting of the petition does not enlarge the issues at all. The only prayer in this petition is that the Commission enter an order granting leave to intervene and become a party. There is no other request. There is no specific request for enlargement of the issue, and that is perfectly plain.

Commissioner Hankin: Do you happen to have a copy of the petition for intervention?

Mr. Prettyman: It says, "Now therefore your petitioner prays the Commission enter an order granting him leave to intervene and become a party to this proceeding. Respectfully submitted."

1040 There is no specific request that the issues be enlarged.

Commissioner Hankin: That is the only thing stated in the petition?

Mr. Pettyman: That is the only prayer.

Commissioner Hankin: Does not the petition state the grounds upon which the O. P. A. wishes to intervene?

Mr. Prettyman: It makes the following representations—it goes on with a lot of representations. Then the only prayer is that they be allowed to intervene. That is the only request in the petition.

Commissioner Hankin: What else is necessary?

Mr. Prettyman: An express request. The rule says so.

Commissioner Hankin: Is that not an express request, if they set forth—

Mr. Prettyman: No.

Commissioner Hankin: What would be the object of setting forth all of these facts if the O. P. A. did not wish to intervene in order to demonstrate those facts?

Mr. Pettyman: I don't know why they put in all of those representations.

1041 Commissioner Hankin: I will tell you why.

Mr. Prettyman: But when they got through making their representations they made no request that the issues be enlarged. I suppose the representations were made in order to show the Commission the O. P. A. could come into the proceeding in regard to the issues raised by the order of the Commission.

Commissioner Hankin: You say you do not know why they put in all of those facts. To me it seems to be quite clear, but perhaps Mr. Booth can inform us why they were put in the petition.

Mr. Prettyman: It does not make any difference why they were put in the petition. The point is did they expressly request an enlargement of the issues, and the answer is they did not.

Commissioner Hankin: As the Chairman just stated, this entire proceeding in a sense involves the integrity of the Commission. It certainly involves the integrity of the Commission when the Commission granted leave to intervene upon certain facts presented and if we then say to the intervener "You may not present those facts"—

Chairman Flanagan: I think the reverse might be true in another way. I have no hesitancy in making this
1042 statement, Mr. Booth, that if the request for leave to intervene had made a specific request for the enlargement of the issues, I, for one, would not have voted for the granting of that petition as filed. Now, that is where the integrity of this Commission might well be involved, to permit you to come in with one request and then to permit you to expand that request into issues which we have decided are not involved in this proceeding.

Mr. Booth: That is why I say it is very vital as far as O. P. A. is concerned that this matter be cleared up and cleared up specifically.

Chairman Flanagan: I think your statement and mine are not far apart, Mr. Booth. I just draw the line as to where the responsibility rests directly upon this Commission.

1043 Mr. Booth: There is no dispute there.

Chairman Flanagan: Then I say there are other conditions which must be taken into consideration, such as those you have outlined, and I have requested the O. P. A. to give the Commission the benefit of its wisdom and investigation along this line.

Mr. Booth: Paragraphs 11, 12 and 13 state "Approval of increase in public utility rates because of increased Fedral income taxes would be contrary to the intention of Congress, inflationary in character and adversely affect the

program and policy of the Office of Price Administration to stabilize prices.

Chairman Flanagan: On that one point, as I remember it in the record, I have at least twice requested that you address yourself specifically to that question.

Mr. Booth: We propose to do so. I just want it clear, Mr. Chairman, that is now one of the issues in this case. That was Paragraph 11. Paragraph 12 states, "It appears that this is the first time since the United States entered the war the Commission is called upon to make a determination or fix rates under said sliding scale arrangement. The application of the arrangement should be reconsidered in the light of the Government's program to present inflation and stabilize the cost of living".

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Chairman Flanagan: What is there in that statement which alters my position that the duty of the Commission first is to determine whether this company is entitled to a rate increase or not, and then to take into consideration, before granting any increase, all of these other matters which are before us.

Mr. Booth: That is all I want to know, Mr. Chairman, that paragraphs 11, 12 and 13 are issues in this case as a result of the granting of our petition for intervention.

Mr. Prettyman: I do not agree to that.

Mr. Booth: If Mr. Prettyman and Mr. Stevens here are right, and of course they are wrong and we all know it—I take it from what you have said and in view of the Commission's earlier ruling, that paragraphs 11, 12 and 13 are in fact issues in this proceeding.

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Chairman Flanagan: I think I have made myself clear in dividing this proceeding into two parts. So far as the sliding scale arrangement is concerned, the Commission has the duty to figure out, first, whether this company is entitled to a rate increase strictly in accordance with the terms of the sliding scale arrangement. As to the second part, I have invited Mr. Booth to give us the benefit of his views and the views of O. P. A. with respect to income taxes

and with respect to their contention that income taxes
1048 should be treated on the basis of the so-called normal
year rather than an abnormal year. To me, that does not affect in the slightest the application of the sliding scale arrangement. It is a point in which this Commission is interested and on which we would be glad to hear the O. P. A.

Commissioner Hankin: On this particular issue I might say I do not see it in an expansion of the sliding scale arrangement because the sliding scale arrangement itself provides for only a reasonable allowance for taxes.

Chairman Flanagan: Mr. Booth, just to get a certain line of thought going on this income tax situation, do you have any idea what the national debt is at the moment, ninety billion, or something of that sort, perhaps?

Mr. Booth: I do not think it has gone up quite that much, but I assume it is rapidly approaching it.

Chairman Flanagan: It is large. May I delay this until after lunch? I wanted to adjourn at 12 o'clock, and the Commission has approved. Maybe you will go into that, and perhaps my question is premature. I will think over it during the lunch period.

Mr. Booth: I want to clear this up as to our exact status
in this proceeding and I take it now that the issues
1049 presented in paragraphs 11, 12 and 13 are issues
which the Commission can appropriately take into consideration in this proceeding.

Mr. Prettyman: We vigorously disagree with that. There is no request the issues be enlarged to include those issues in this proceeding. They are purely a representation and not a request.

Mr. Booth: We have requested the Commission to take those facts into consideration. We requested that the first time I appeared here and we have said as a matter of fact it would be illegal for the Commission to fix rates without taking those things into consideration.

Mr. Prettyman: That is a question of law.

Chairman Flanagan: We will take an adjournment until whatever hour is most convenient to all concerned. Off the record.

(Discussion off the record.)

Chairman Flanagan: We will recess until 2 o'clock.

(Thereupon at 12 o'clock noon, a recess was taken until 2 o'clock p. m.)

Afternoon Session

Met, pursuant to the taking of the recess, at 2
1050 o'clock p. m.

Chairman Flanagan: Did you want to continue, Mr. Booth?

Mr. Booth: If it is clearly understood that the issues raised by our intervening petition are now properly before the Commission as a result of the order granting us leave to intervene and be a party to the proceeding, that is all that I had raised, and as long as that is clear and on the assumption it is, I would be satisfied to drop the matter and not pursue it any further at this time.

Mr. Prettyman: I want to say it is clearly not understood by us, Mr. Chairman.

Chairman Flanagan: I have attempted to make our position clear. Perhaps we had better proceed with the hearing and if objections are made we can rule on them.

Mr. Booth: I do not know whether it would be desirable for the Commission to enter a formal order similar to the one that I have drafted as a suggestion, merely giving us an order confirming the fact that on August 18th we filed our petition for leave to intervene and be a party and that that petition was granted.

Chairman Flanagan: There is nothing that I can add to my position. Mr. Booth, and I suggest we go on
1051 with the proceeding.

Mr. Booth: Pardon me.

Commissioner Kutz: I would like to say I agree with the statement of the Chairman.

. . . . . .

1094 Mr. Booth: If the Chairman please, before the Commissioner takes up a new subject, I wonder if I may be permitted to ask the witness one or two questions, very brief questions?

Chairman Flanagan: If the Commissioner will yield the floor, I have no objection.

Commissioner Hankin: Please do. In fact, I should like you to do that whenever I have finished with one subject, so I will have a little rest.

Mr. Booth: If I feel I can make any contribution, I will interrupt you. I appreciate your courtesy.

. . . . . .

1098 Commissioner Hankin: Are you through, Mr. Booth?

Mr. Booth: Yes.

. . . . . .

1150 **Everett J. Boothby**

was recalled as a witness and having been previously duly sworn, testified further as follows:

. . . . . .

1159 Commissioner Hankin: That is all, Mr. Boothby.

Mr. Booth: I just want to ask one or two questions.

. . . . . .

1171 Mr. Booth: Yes.

That will be all of Mr. Boothby at this time.

. . . . . .

1185 Mr. Booth: I will recall Mr. Owers to the stand, unless someone else has some questions of another witness at this time.

Chairman Flanagan: Mr. Owers, take the stand.

Robert C. Owers

was recalled as a witness and, having been previously duly sworn, testified further as follows:

. . . . . .

Chairman Flanagan: Mr. Booth, as I have intimated, we are interested in O.P.A.'s ideas as to the treatment
1195 of income taxes. As to the sliding scale arrangement itself and its terms and the determination as to whether under the terms of that arrangement the company is or is not entitled to a rate increase, as I have repeatedly stated, is one problem. If you are prepared to expand the views of the O.P.A. with respect to the suggested treatment of income taxes, we would be delighted to hear those views.

Mr. Booth: I hope to have a witness this afternoon on the question.

. . . . . .

Mr. Booth: I am through with Mr. Owers and I have a few questions of Mr. McElfresh—

1211 Chairman Flanagan: What I had in mind was we are planning to adjourn at 12; are you in a position to submit this to the Commission now, Mr. Prettyman?

Mr. Booth: I was going to suggest when we resume, if we do it now it will give me a little more time because the testimony I am going to present will only take about three-quarters of an hour. I was going to suggest we resume at 2:30, even though we adjourn at 12, because the testimony I will have will not take over three-quarters of an hour and I will have to have a little talk—I have not had a chance to talk with one of the people who testified the other day.

Chairman Flanagan: What other cross examination do you plan to have, Mr. Booth?

1212 Mr. Booth: I have just a few questions of Mr. McElfresh which will only take about five or ten minutes.

. . . . . .

Mr. Booth: We are through except I want to ask Mr. McElfresh a few other questions, and I do not consider that cross examination.

Mr. Stevens: Why not put on Mr. McElfresh and finish up your questions and any questions the Commission may have of him.

Chairman Flanagan: You are excused, Mr. Owers.

(Witness excused.)

Chairman Flanagan: Will you take the stand, Mr. McElfresh.

V. A. McElfresh

was recalled as a witness, and having been previously duly sworn testified further as follows:

FURTHER CROSS EXAMINATION

Mr. Booth: Mr. McElfresh, you testified previously in this case?

Mr. McElfresh: Yes.

Mr. Booth: I believe you testified that the accounting inquiry on behalf of the Commission was under you direct charge?

Mr. McElfresh: That is right.

Mr. Booth: And you prepared, I believe, what is known as Exhibit No. 1?

Mr. McElfresh: Yes.

Mr. Booth: That is entitled "Washington Gas Light Company, Prince George's Gas Corporation, determination as of June 30, 1940, of net amount available for return and amount available for increase of rates"; is that the correct title?

Mr. McElfresh: That is correct, sir.

Mr. Booth: In your study which you made in the preparation of this exhibit did you give any consideration to the date of the company's operations under the sliding scale arrangement and its application in the light of the Government's program to prevent inflation and to stabilize the cost of living?

Mr. McElfresh: I will say that this examination was conducted and the exhibit was prepared in accordance with the requirements of the sliding scale arrangement without—

Mr. Booth: You made the same sort of study this year that you made in prior years?

Mr. McElfresh: That is right.

Mr. Harrison: Let him finish.

Mr. Booth: Pardon me.

Mr. McElfresh: The one exception is the proposed adjustment with respect to the elimination of excess profits taxes.

Mr. Booth: But even as to that item I believe you stated that you thought excess profits taxes should be provided for under the sliding scale arrangement?

Mr. McElfresh: That is correct.

Mr. Booth: But you still thought the Commission ought to throw them out?

Mr. McElfresh: I suggested that elimination for the consideration of the Commission.

Mr. Booth: But you therefore did not reconsider the operations of the company under the sliding scale
1216 arrangement as determined by you in this exhibit in the light of the Government's program to prevent inflation and to stabilize the cost of living, except perhaps as to the suggestion which you have made with respect to the excess profits taxes?

I think that is correct, sir, yes.

* * * * * * * * * *

Chairman Flanagan: I think, Mr. Booth, we have made clear exactly what we want from O.P.A. Unfortu-
1228 nately I do not think you are making any attempt to give us the benefit of what I have requested. That type of testimony is ruled out.

Mr. Booth: If the Chairman please, the position of O.P.A. is expressed in its intervening petition. We were allowed to intervene and be made a party to this proceeding—

Chairman Flanagan: That is right.

Mr. Booth: Has there been a change of mind on the part of the Commission as to whether or not we are now allowed to intervene and be a party to this proceeding?

Chairman Flanagan: Not in the least, but we have announced from the bench how and in what respects we want the advice of O.P.A.

Mr. Booth: That is, you are now attempting—

Chairman Flanagan: The time you are taking up arguing as to the legal position of O.P.A. might well be better devoted to developing some of the ideas of the O.P.A. which will help us.

Mr. Booth: Mr. Chairman, it may be that the question of the legal position of O.P.A. is a very important mat-
1229 ter from the viewpoint of O.P.A. in connection with this record and the protection of its rights in this proceeding—

Commissioner Hankin: Mr. Booth, may I ask you—

Mr. Booth: If we have been misled by the authority granted by the Commission on August 18th permitting us to intervene and whether or not the issues we raised in this proceeding are legal issues in this proceeding, of course that is a thing I have been trying to have cleared up and it has not been cleared up to my satisfaction.

Chairman Flanagan: I do not think you have been misled. I think it has been very clearly stated.

* * * * * * * * * * *

1252 Chairman Flanagan: Were you going to have a witness this afternoon, Mr. Booth?

Mr. Booth: Yes. I may have as many as two witnesses.

Chairman Flanagan: Will you put them on, please.

Mr. Booth: No, I would prefer to have the company go forward with this statement with respect to the treatment of excess profits taxes.

Chairman Flanagan: Is your witness going to cover that statement? Is he going to testify with reference to the contents of that statement?

Mr. Booth: One of my witnesses may testify with respect to that, but before any of my witnesses testify, Mr. Chairman, I am going to make some motions, but I would prefer to make them after the company puts in testimony with respect to their case.

Chairman Flanagan: I do not see it is necessary to wait for that. Do you mind making your motions now?

Mr. Booth: I will be glad to.

If the Commission please, on the 7th day of Sep-
1253 tember the President of the United States addressed a message to the Congress of the United States. In that message he reiterated the need for over-all stabilization of prices as essential to the winning of the war. Among other items he referred to an earlier message in which he stated that in order to keep the cost of living from spiraling upward we must tax heavily and in that process keep personal and corporate profits at a reasonable rate, the word reasonable being defined at a low level. He stated also that experience demonstrated that general control of prices is possible, but only if that control is all-inclusive. He called for a recognition upon the part of the American people of the need for greater sacrifice. He declared that what is needed therefore is an over-all stabilization of prices, salaries, wages and profits.

At noon today there was introduced in Congress, Senate Joint Resolution No. 161, a copy of which I propose to place into the record. This resolution is headed "Joint Resolution to aid in stabilizing the cost of living." I will read one section of it:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That in order to aid in the effective prosecution of
1254 the war, the President is authorized and directed to stabilize prices, wages, salaries and other factors affecting the cost of living; and such stabilization shall so far as practicable be on the basis of the levels which existed on August 15, 1942. In exercising the authority conferred

by this joint resolution, the President may provide for making adjustments with respect to such prices, wages, salaries and other factors, to the extent that he finds necessary to correct gross inequities or to aid in the effective prosecution of the war."

Then Section 2 goes on to provide for the promulgation of various regulations by the President from time to time.

Section 3 relates to agricultural prices.

Section 4 relates to wages.

Section 5 also relates to wages and salaries.

Section 6 is the termination date.

And Section 7 provides for amendment of Section 1(b) of the Emergency Price Control Act which is extended to June 30, 1944.

It cannot be denied that the price of gas service constitutes an important element affecting the cost of living in the District of Columbia. Nor can it be denied that the sliding scale arrangement has resulted in an exceed-
1255 ingly liberal return to the Washington Gas Light Company in the several years in which it has been in operation. It has in fact been admitted that the arrangement has not produced a hardship upon the company.

It has already been established that the company seeks an increase in rates based upon operating expenses which includes approximately $300,000 to $350,000 in income taxes in excess of the amounts paid by the company between 1936 and 1939. These additional taxes have been levied upon it by Congress as the result of the tremendous expense incurred by the nation in this war.

If there was ever a time when the utmost caution should be exercised before granting a price increase, that time is the present. This is especially true where the increase would apply to the District of Columbia, affecting several hundred thousand government workers, most of whom are themselves engaged in making substantial sacrifices through the purchases of victory bonds and personal income taxes. They live in a city where living costs are already about the

highest in the country. They, and practically all other customers of the company, are going to have enough of their own income taxes to pay without taking over the war
1256 income taxes of the Washington Gas Light Company.

The position of this company is so grossly unfair and inequitable that this Commission should lose no time in making it clear that this Commission, like the OPA, does not propose to tolerate the Company's position that its customers pay its war taxes.

When our motion for leave to intervene was filed, and it was granted by the Commission, we took the position and felt it was a reasonable position to take, that all of the issues that were raised in that motion were before the Commission, and that would include the determination on the basis of an adequate record whether or not a hardship would result if the company was required to operate at existing rates. In view of the fact that Congress now has before it a bill, a joint resolution, which provides for over-all control of all prices, in which there is a provision which says that in so far as practicable prices shall be maintained on the levels that existed as of August 15, 1942——

Chairman Flanagan: Does that include utility rates, Mr. Booth?

Mr. Booth: There is no exception. It says all prices, depending upon appropriate action of the President
1257 after the enactment of the bill, assuming that the bill would be enacted, it would provide for over-all control.

It would seem to me very inappropriate for this Commission to pass upon the question as to whether or not there should be an increase in the rates of the Washington Gas Light Company on the basis of the narrow provisions set forth in the sliding scale arrangement. However it has been my position that the Commission under paragraph 18 of the Public Utilities Act is free in this proceeding to give consideration to every relevant factor under which it must in any rate proceeding determine what is a fair and reason-

able rate and I want to read this section to the Commission. It says: "Nothing in this section shall be taken to prohibit a public utility with the consent of the Commission from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale or other financial device that may be practical and just to the parties interested. No such arrangement or device shall be lawful until it shall be found by the Commission after investigation, to be reasonable and just and not inconsistent with the purposes of this section. Such arrangement shall be under the supervision and regulation of the Commission. The Commission shall ascer-
1258 tain, determine and order such rates, charges and regulations and the duration thereof as may be necessary to give effect to such arrangement, with the right and power to make such other and further changes in rates, charges and regulations as the Commission may ascertain and determine to be necessary and reasonable, and the right to alter, or amend is reserved and vested in the Commission."

So it is my suggestion to the Commission the Commission could in this proceeding give consideration and it should and must of necessity give consideration to every relevant factor under which fair and reasonable rates be determined on the basis of law and the economic conditions of today.

In view of the status of the record, however, and I think it is pretty clear the Company has failed to show that it is entitled to any rate increase as a matter of law, I would suggest the Commission give serious consideration to the following, and I propose at a later date to supplement my statement by the filing of a written motion if adequate opportunity presents:

1. Prompt dismissal of the proceeding.
2. The continuance of this proceeding until after Con-
gress shall have acted. Of course no one knows when
1259 that will be, but I suggest it might be proper to put the case over for thirty days.

3. That if the Commission is still of the opinion after reconsideration of its legal powers with respect to the determination of fair and reasonable rates in the light of the authority which is reserved to it, notwithstanding the entry by the Commission into a sliding scale arrangement, that the Commission issue appropriate orders under which the Commission can in this proceeding give consideration to all relevant facts under which fair and reasonable rates can be determined, by a reconsideration of the sliding scale arrangement in the light of the economic conditions which we are now in, in the light of the Government's program to stabilize prices, and in the light of all other factors which the Commission must as a matter of law consider in their determination of fair and reasonable rates.

I would have preferred to put these motions in writing, but the time has been very short. I suggest to the Commission that the proceeding may be important enough for the Commission to ask for the presentation of written briefs on its legal position with respect to the effect of the sliding scale arrangement on its powers and obligations
1260 under the provisions of the Public Utilities Act under which it operates.

I thank you.

Chairman Flanagan: Your suggestions will receive the consideration of the Commission.

Mr. Booth: Do I understand——

Chairman Flanagan: I understand you have a witness now.

Mr. Booth: Yes, but I would rather have the company put in this proposal, but if not, I will call Mr. Riley.

Chairman Flanagan: We can have that proposal put in before you present the witness who will cover it.

Mr. Booth: All right.

Roderick H. Riley

1261 called as a witness on behalf of Office of Price Administration, being first duly sworn, testified as follows:

Direct examination

Mr. Booth: Will you state your name?

Mr. Riley: My name is Roderick H. Riley.

Mr. Booth: What is your residence?

Mr. Riley: I am a resident of Madison, Wisconsin. My business address is Washington, D. C.

Mr. Booth: Will you state what your present position is?

Mr. Riley: My position in the office of Price Administration is Assistant Director of Research.

Mr. Booth: Will you state your education and experience?

Mr. Riley: My education and experience include training in economics at the University of Wisconsin, from which institution I hold the B. A. and M. A. degrees and where I have completed most of the requirements for the doctorate. I have taught economics in the Universities of Wisconsin, Texas, and Cincinnati. At each of the latter two I was a member of the graduate faculty.

Prior to joining Mr. Henderson's staff, in January, 1941, I was an economist in the Department of Commerce.

1262 Mr. Booth: Will you describe your duties at the Office of Price Administration?

Mr. Riley: My position in the Office of Price Administration is Assistant Director of Research. This Division is primarily concerned with research for policy purposes and I share in the general responsibility for direction of this work. The Director of Research is also Economic Advisor to the Administrator and I work closely with him on all policy matters.

Mr. Booth: What bearing, in your opinion, do the policies of the OPA have upon the present proceeding before this Commission?

Mr. Riley: Both the OPA and this Commission have responsibility for the regulation of prices. The responsibility of the Office of Price Administration is nation-wide and extends to most prices. This Commission has responsibility for the regulation of the rates of public utilities within the

District of Columbia. The Emergency Price Control Act specifically exempts the rates of public utilties from OPA control. The reason for this exemption is plain. These prices were already under control. An administrative apparatus already existed through which the wartime
1263 control of utility rates could be exercised. They were exempted from OPA control to avoid overlapping of jurisdiction, a purely administrative reason.

The exemption of public utility rates from OPA control does not relieve public service commissions from the duty to consider the same basic facts and the same requirements of national policy as underlie the control of other prices. OPA is not the sole wartime price control agency. The regulatory commissions also are part of the war economy and to the extent of their jurisdiction must carry out the national price policy.

We are at war. We are engaged in the toughest war of all time. That war has its military fronts. It has its production front. And it has its economic front. We cannot win on the military fronts unless we win on the production front; and we cannot win the battle of production if our economy is put out of commission by inflation.

Inflation does not appear suddenly and without warning. It is not absent one day and upon us the next flooding the economy all at once. It comes by 1 percent stages, gradually and insidiously. First one price advances, then another, then several at once. Rising profits and rising living costs result in demands for increased wages; rising
1264 wage costs and rising purchasing power join forces to push prices upward. At first slowly, then more and more rapidly, the pressures spread and grow until the inflationary movement develops to dangerous proportions. Last April just that sort of development had occurred, threatening the economy and the war program. The President recognized the danger and launched the National Economic Program against inflation. Last Monday, four months later, the President sternly warned the Congress

and the entire Nation that this major battle was being lost and that our entire war effort was endangered.

The keystone of the National Economic Program is the direct control of prices and rents. The Office of Price Administration has held the line since May waiting for reinforcements. By our direct controls we have held the cost of living to a rise of less than 1¼ percent since May. The pressures have been enormous and we have not been able to hold every part of the line. Some elements have been beyond our control and have risen substantially, but others we have actually reduced and the cost of living as a whole has been prevented from rising more than a third as rapidly as it was rising in the first months of the year.

1265 It is this initial stabilization of the cost of living that makes feasible the carrying out of the balance of the President's program. Only if the cost of living is held stable can wages and other incomes be stabilized. Only if incomes are stabilized can the growth of inflationary pressure be restrained sufficiently for adequate tax and savings measures to be planned and carried out. And only if these other elements of the program are made effective can the cost of living be stabilized for the duration. Stabilization of the cost of living for the duration is the national objective in this battle. Its initial stabilization is essential to the full marshaling of our forces for the attainment of this major objective. From both the short view and the long, therefore, the present proceeding, which involves an important item in the cost of living—and which involves in principle the entire cost of living—is directly and substantially and inescapably related to the National Economic Program and to the policies of the Office of Price Administration.

Mr. Booth: What test of the reasonableness of earnings has the OPA determined to be appropriate in the wartime control of prices?

Mr. Riley: This is a matter of policy that has had the most thorough and careful examination. Under the

1266 policy decided upon, a comparison is made between current earnings before taxes and the earnings before taxes in normal pre-war years. So long as earnings before taxes do not fall below the pre-war level, they are presumptively fair and reasonable.

Mr. Booth: What is the reason for taking earnings before taxes rather than after taxes?

Mr. Riley: The taxes referred to are, of course, income and excess profits taxes. Excise taxes are included in operating costs. The inclusion of excise taxes is based upon Congressional intent, long recognized, that such taxes be passed on by the original taxpayer. In the case of income taxes and excess profits taxes, the Congressional intent is the reverse; by their very nature they are intended to be paid by the person to whom they are assessed and not to be passed on through higher prices. To include them in cost would place the Price Administrator or any other agency of price or rate control in the impossible position of sanctioning an increase of prices whenever the burden of taxation was increased. No more deliberately inflationary policy could be adopted.

The policy of including income taxes in business costs would have serious effects going far beyond the direct raising of prices. If corporate incomes are to be in-
1267 creased by the amount of additional taxes, individual incomes should be accorded the same treatment. Business and government salaries should be increased by the amount of additional income taxes. The War Labor Board formula should be amended to provide that wages shall rise to cover the workers' additional income taxes! We should all share in the remarkable privilege of passing on our war taxes to others!

Now it is perfectly obvious that no amount of such tax-passing can enable us as a nation to dodge the burden of war. It is quite possible, however, as this proceding bears witness, for any element in the community to seek to avoid paying its share of war taxes by charging higher prices.

It requires only that this lead be generally followed to put us into a completely uncontrolled inflation and lose us the war. Prices and incomes would be forced up all along the line. Rising incomes would make for higher costs and themselves would add to the pressure on prices. Under continued application of the proposed policy on taxes, all factors would combine to insure that incomes and prices would rise without limit. I repeat, no more deliberately inflationary policy could be adopted.

Mr. Booth: Has OPA recently taken a position on
1268 this problem of wartime taxes with respect to public utilities?

Mr. Riley: Yes, and in that connection I should like to refer to a recent letter of Leon Henderson to Senator Norris:

"In April our attention was called to the 15-percent increase in telephone rates made by the Northwestern Bell Telephone Co., in the State of Iowa. This increase, termed a surcharge by the company, was imposed on nearly all exchange and intra-State toll service. No regulatory agency whose permission must be first obtained for such rate increase in Iowa is provided for by the laws of that State. After obtaining the technical assistance of the Federal Communications Commission, we called the company in conference and requested it to withdraw this increase as it appeared that the higher rates were imposed in large part to effect estimated higher Federal income taxes. The company agreed to this request and subsequently withdrew a request for a rate increase of about the same character pending before the North Dakota Commission, although it had earlier obtained the approval of the South Dakota Commission for a similar increase in rates.

* * * * * * * * * *

"It is true, as you suggest,"——

1269 Mr. Booth: What you are doing now is reading from another part of the same letter; is that correct?

Mr. Riley: Yes, further on in the letter Mr. Henderson goes on to say:

"It is true, as you suggest, we filed a petition for intervention in the Bangor Hydro-Electric rate case before the Maine Public Utility Commission. There, too, it appeared that the increase requested was because of projected higher Federal income taxes. Moreover, we were advised by certain paper companies, customers of the electric company, that if the power rate increase was approved, they would seek to have our maximum prices on paper and pulp increased. While conferences were pending with respect to the date of hearing, the company withdrew its application for an increase.

. . . . . .

"The relationship of taxes to utility rates is extremely important in devising and administering a proper program to control prices and the cost of living. In peacetime the principle that a utility is entitled to a fair return after allowance of all Federal income tax has been generally accepted. As an essential war measure, however, we
1270 propose to oppose the application of this principle to any request which would contemplate an increase in rates predicated upon the allowance of anything over and above the normal Federal income tax. Higher rates predicated upon increased Federal taxes would obviously be contrary to the intention of Congress, be inflationary in character, and adversely affect our program to prevent further increases in the cost of living."

Mr. Booth: If for the purpose of this proceeding we were to use the highest tax rate during the 1936-1939 period, would that be fair as compared with OPA's policy?

Commissioner Hankin: Before you answer that question I would like to ask Mr. Riley a question with respect to that letter.

Mr. Booth: May I finish this? This is the last part of the testimony, if the Commissioner please, and I would rather have it concluded.

Commissioner Hankin: Go ahead.

Mr. Riley: Yes, that would not only be fair but, in fact, liberal.

1271 Mr. Booth: That is all. Do you have anything else to add at this time?

Mr. Riley: No.

. . . . . .

Mr. Prettyman: We have no cross-examination of Mr. Riley.

. . . . . .

1291 Chairman Flanagan: Put your witness on.

Samuel Joseph

was called as a witness on behalf of Office of Price Administration and, being first duly sworn, testified as follows:

Direct examination

Mr. Booth: Will you state your name to the reporter, please?

Mr. Joseph: My name is Samuel Joseph.

Mr. Booth: Where do you live?

Mr. Joseph: I live in Arlington, Virginia.

1292 Mr. Booth: And what is your position at the present time?

Mr. Joseph: Chief Examiner of Accounts, Division of Finance and Statistics, Bureau of Accounts, Finance and Rates, of the Federal Power Commission. For the purpose of this proceeding I am on loan by the Federal Power Commission to the Office of Price Administration.

Mr. Booth: Please state your educational background?

Mr. Joseph: I am a graduate of the Wharton School of the University of Pennsylvania, in 1928, with a degree of Bachelor of Science. I attended Columbia University graduate school of Business Administration, and did some work toward a Master's degree. I am a graduate of the Brooklyn Law School in 1933 with the degree of Bachelor of Law. I was granted a certificate as a Certified Public Accountant

by the State of New York, in 1932, and was admitted to the bar of the State of New York in 1934.

Mr. Booth: Please state your experience.

Mr. Joseph: Since 1934 I have been engaged in the public utility rate regulatory field. I have worked on statewide investigations of telephone rates in Louisiana, Alabama and West Virginia. I have also worked on investigations of other utility companies, including electric, water and gas utilities. I have testified before the Louisiana and
1293 Alabama Public Service Commissions, the Public Service Commission of West Virginia, and the Federal Power Commission.

At present, and since August, 1939, I have been employed by the Federal Power Commission. I was first employed as a Senior Examiner of Accounts and was assigned to the investigation of the Natural Gas Pipeline Company of America and Texoma Natural Gas Company as Accounting Examiner in Charge. Since then I have been promoted to the position of Chief Examiner in the Division of Finance which position I now hold.

I have taken part in the investigation of the following companies: Southern Bell Telephone and Telegraph Company in the States of Louisiana and Alabama; New Orleans Public Service Company; Louisiana Power and Light Company; Louisiana Public Utilities Company; Baton Rouge Water Company; Chesapeake and Potomac Telephone Company of West Virginia; Wheeling Electric Company; Appalachian Electric Power Company; Natural Gas Pipeline Company of America and Texoma Natural Gas Company; Panhandle Eastern Pipeline Company; Michigan Gas Transmission Corporation; and Interstate Natural Gas Company.

My present duties with the Federal Power Com-
1294 mission include the responsibility for making studies and conducting research on the subject of fair rate of return for public utilities. (a) In this connection, I am charged with the duty of keeping informed on the important subject of income and excess profits taxes and the re-

lationship of such taxes, both present and prospective, to the earnings and fair rate of return of utility companies.

Mr. Booth: Have you, at my request, prepared an exhibit for presentation in this proceeding?

Mr. Joseph: I have.

Mr. Booth: Is this the exhibit which you prepared?

Mr. Joseph: Yes.

Mr. Booth: I ask that this be marked for identification Exhibit 8.

Chairman Flanagan: It will be so marked.

(The exhibit referred to was marked for identification. Exhibit No. 8.)

Mr. Booth: Will you please explain the source of the information contained in the exhibit?

Mr. Joseph: Columns 1 and 2 of the exhibit, marked Company and P. U. C. Accountants are taken from Exhibit 2 of this proceeding. The information shown in these
1295 two columns is somewhat abbreviated but otherwise is identical with Exhibit 2.

Mr. Booth: Please explain the column headed O.P.A.

Mr. Joseph: The column headed O.P.A. is the same as that headed P. U. C. Accountants with two exceptions. The first difference is with respect to the item of depreciation and the second change is with respect to the item of income taxes.

Mr. Booth: What is the basis for the change which you have made in the item of income taxes?

Mr. Joseph: The adjustment which I have made is based upon Mr. Riley's testimony. The derivation of the dollar amount, namely $234,848 is explained in Note (a) of the exhibit. The 19 per cent rate is the highest tax rate applicable to corporations in the 1936-1939 period.

Mr. Booth: What is the basis for the change which you have made with respect to the item of depreciation?

Mr. Joseph: Pursuant to your suggestion, I used the sinking fund basis for depreciation to arrive at the annual provision for depreciation shown in my exhibit.

Mr. Booth: Was the sinking fund depreciation method used in the Natural Gas Pipeline Company of Amer-
1296 ica case?

Mr. Joseph: Yes.

Mr. Booth: Do you know whether the sinking fund depreciation method used by the Federal Power Commission was upheld in the Supreme Court's recent decision in the Natural Gas Pipeline Company of America case?

Mr. Joseph: Yes, it was.

Mr. Booth: Have you, for the purpose of your exhibit, followed the same depreciation method used by the Federal Power Commission in the Natural Gas Pipeline Company of America case?

Mr. Joseph: Yes, I have.

Mr. Booth: Please briefly explain the derivation of the figure of $120,722 shown under the column head O. P. A. for the item of depreciation.

Mr. Joseph: As is shown by the exhibit itself, this amount is that which, if set aside annually for a period of 43 years will, when compounded at an annual interest rate of 6½ per cent equal $26,000,000 at the end of the period.

Mr. Booth: Why did you use an interest rate of 6½ per cent?

Mr. Joseph: In applying the sinking fund method of depreciation it is necessary to use the same sinking
1297 fund interest rate as the rate of return. Any lower rate of return would be unfair to the ratepayers; a higher rate of interest, if used in the sinking fund calculation would be unfair to the company.

Mr. Stevens: Mr. Chairman.

Mr. Booth: Would you please permit me to conclude the testimony. It will be relatively short. Mr. Stevens, instead of encumbering the record, you can make your objection later, after I have concluded with the witness.

Mr. Stevens: Thank you.

Mr. Booth: I have not offered the exhibit in evidence yet. I propose to as soon as I complete his testimony.

Mr. Stevens: Thank you. I move, Mr. Chairman, to strike all of his testimony with respect to depreciation for reasons we have already discussed with the Commission, and it has been argued by both Mr. Booth and myself and the Commission has already ruled to exclude further testimony of this kind on depreciation.

Mr. Booth: If the Commission please I suggest the witness be given an opportunity to complete his testimony and then if the Commission is going to give any serious consideration to Mr. Stevens' statement I would like to
1298 present a brief argument in support of my reasons why the exhibit should remain in the record without any qualification.

Chairman Flanagan: As I understand it this is a calculation which bears a resemblance to the calculation made under the sliding arrangement in some respects, but not in all.

Mr. Booth: That is correct.

Chairman Flanagan: And you are attempting to explain those items in which a departure is taken from the sliding scale arrangement, such as income taxes and depreciation?

Mr. Booth: He will explain that.

Chairman Flanagan: And you say that the examination is not very lengthy from now?

Mr. Booth: No, it is relatively short. I want to make an argument on the law as to why the exhibit——

Chairman Flanagan: I think we might permit you to continue and Mr. Stevens can offer his objection at the time this exhibit is again offered for the record.

Mr. Booth: Did you conclude your explanation as to why you used an interest rate of 6½ per cent, Mr. Joseph?

Mr. Joseph: I think I did, Mr. Booth.

Mr. Booth: How did you arrive at the 43 years
1299 which you used?

Mr. Joseph: That is based on Mr. Ower's testimony in the proceeding and upon consideration of the 2.2 per cent rate of depreciation which Mr. Owers has testified the company is now using under the straight line method of depreciation.

Mr. Booth: How did you arrive at the figure of $26,000,000?

Mr. Joseph: The $26,000,000 represents my estimate of the maximum amount of depreciable property contained in the rate base figure of $28,088,332 shown in Column headed P. U. C. Accountants. Materials and supplies, cash working capital and land should be excluded in arriving at the amount of depreciable property. I have estimated that the non-depreciable property contained in the rate base figure of $28,088,322 is equal to at least $2,088,332.

Mr. Stevens: I move to strike the answer, Mr. Chairman——

Mr. Booth: Mr. Stevens——

Mr. Stevens: May I finish.

Mr. Booth: You want to strike it all, I understand?

Mr. Stevens: I move to strike that answer. This witness is expressing his opinion as to a change in rates, which is the very thing we have discussed time and again.

1300 Chairman. Flanagan: I think that motion is well taken.

Mr. Booth: I will comment on that, too, in connection with my answer to Mr. Stevens' desire to strike this testimony.

Chairman Flanagan: I prefer you comment on it now. We have the question and the objection to rule on.

Mr. Booth: Mr. Owers himself testified that in determining the annual depreciation expense of the company on its books that the annual depreciation expense was computed upon the depreciable property. I believe Mr. Owers may also have indicated that what he was doing at that time was attempting to follow the classification of accounts as prescribed by the Federal Power Commission for natural gas companies. The computation of annual depreciation expense in a rate case upon anything other than depreciable property, if the Commission please, is so flagrant a violation of the established law on the subject and the established practice with respect to the determination of depreciation expense on only depreciated property as set forth in the

various classifications of accounts prescribed by the various regulatory bodies for gas, electric, telephone and other utilities, that I do not believe this witness could partici-
1301 pate in preparation of an exhibit predicated upon so erroneous a method. I think he did it perhaps of his own volition. It is possible I also instructed him to follow the law in the situation, but the witness may have a further explanation of his own.

Mr. Stevens: Mr. Owers' testimony on the point of depreciation was on cross examination. It has never been the position of the company that that testimony was relevant to the sliding scale. It has nothing to do, as this Commission is fully aware, with the formula for computing the reserve for retirements under the sliding scale. To include such a figure as proposed by this witness in this exhibit is like comparing potatoes and eggs; there is not any comparison whatsoever. I move it be stricken.

Mr. Booth: He was not changing the rate base but merely computing the annual depreciation.

Chairman Flanagan: Mr. Booth, this is so far removed from the limits which I have attempted to impose that I must grant the motion to strike that question with regard to the depreciation. Another factor has now been injected, which is Mr. Joseph's attempt to evaluate this property.

Mr. Booth: I think you misunderstand, Mr. Chairman.

Chairman Flanagan: In his own words he has at-
1302 tempted to establish a rate base.

Mr. Booth: Not at all.

Mr. Stevens: He says these $2,000,000 should go out; did you not say that, Mr. Joseph?

Mr. Booth: No, he did not say that at all.

Mr. Joseph: I have not changed the rate base used by the Public Utilities Commission accountants at all.

Mr. Booth: No, he has not changed the rate base.

Chairman Flanagan: Let me clarify one thing. As I understand it, Mr. Joseph, in using the sinking fund method, you have followed what Mr. Booth classifies as the deter-

mination made by the Federal Power Commission in the case of Natural Gas Pipeline Company of America; is that true?

Mr. Joseph: Yes, sir.

Chairman Flanagan: With regard to percentage?

Mr. Joseph: With regard to the application of the sinking fund method of depreciation.

Chairman Flanagan: Can you mention any points of similarity between the Natural Gas Pipeline Company and the Washington Gas Light Company in the nature of their business?

Mr. Joseph: The nature of accounting for both the Natural Gas Pipeline Company of America and the
1303 Washington Gas Light Company is precisely the same in that they keep their records under the Federal Power Commission's uniform system of accounts.

Chairman Flanagan: But you have not taken the rate of depreciation specifically set out in the sliding scale arrangement, have you?

Mr. Joseph: I have changed that to conform to the sinking fund method of depreciation.

Chairman Flanagan: I am afraid I shall have to support the motion to strike the answer with respect to depreciation.

Mr. Booth: Do I understand that the ruling of the Commission—has the Chairman consulted with the Commission on the subject?

Chairman Flanagan: What?

Mr. Booth: Has the Chairman consulted with the Commission on the subject?

Chairman Flanagan: I have now.

Commissioner Hankin: I said no.

Chairman Flanagan: It is the ruling of the majority of the Commission.

Commissioner Hankin: I would like to state my
1304 reasons for the dissent. What the witness is presenting to the Commission with respect to the item of depreciation is something that corresponds to the facts

of depreciation on the company's properties. He is not setting up a different rate base; he is assuming for purposes of the case the rate base presented by the Commission's staff; he is applying an accrual sinking fund theory of depreciation on an item of $26,000,000 which he computes to be the maximum amount of depreciable property.

Now, under the sliding scale arrangement we have a method of computing depreciation not only upon the depreciable property but also on non-depreciable property, which, of course, is perfectly absurd——

Chairman Flanagan: Just a moment. I think in a moment I shall move to strike all of these remarks as they are definitely applicable to the question which has been ruled out, not once, but at least three times in this proceeding. When you come to argue in support of a dissent, I still think it is an incorrect way to handle a Commission ruling.

Commissioner Hankin: Do you mean to say a Commissioner has no right to dissent from the ruling of the Commission?

Chairman Flanagan: A Commissioner has no right
1305 to get into the record argument which he is not permitted by majority rule, either through dissent or otherwise.

Commissioner Hankin: That is a very novel ruling. However, I shall continue.

The significance of what the witness is trying to introduce in this case is this: That if it is to be considered whether the company is entitled to an increase or not, it is pertinent to consider what would have been the computations on the basis of the figures presented by the Commission but upon a proper theory of depreciation. For this reason I must dissent from the ruling of the Commission.

Mr. Booth: Mr. Joseph, after making the adjustments which you have discussed, do you find that there is an excess of deficit in this company's basic return?

Mr. Joseph: I find there is an excess.

Mr. Booth: What is the amount of the excess in basic return?

Mr. Joseph: $95,335.

Mr. Booth: If the Commission please, I thought I would be given an opportunity to comment on the motion of Mr. Stevens——

Chairman Flanagan: You did comment, Mr. Booth?

Mr. Booth: No, I did not. I meant to refer very
1306 briefly to a statement of the United States Supreme Court on this question which bears directly upon the validity of the method used in the sliding scale arrangement. I think it might be pertinent to this Commission if I could read very briefly from a decision of the United States Supreme Court on March 16, 1942, in Federal Power Commission and Illinois Commerce Commission vs. Natural Gas Pipeline Company of America.

Chairman Flanagan: In that case, Mr. Booth, an actual rate investigation was in process, was it not, involving valuation and rates of return? It was a complete new proposition before the Commission. Is that not correct?

Mr. Booth: The Commission is following the law, I take it, under which it was given authority to fix fair and reasonable rates. There is no difference between what the Commission was doing in that case and what the Commission's task and responsibility and what it is going to be required to do in this case, namely, to fix fair and reasonable rates under the law, and the sliding scale arrangement is merely a part of the process under which the Commission arrives at what are fair and legal rates. It seems to me that in connection with the suggestion that I made earlier to the Commission that this proceeding be broadened to cover
1307 the appropriate facts and issues which the Commission as a matter of law is compelled to recognize in determining these rates, it might be very appropriate for the Commission to give some consideration——

Chairman Flanagan: What case are you referring to?

Mr. Booth: The Natural Gas Pipeline case. I want to read two paragraphs in the record, if I may. May I?

Chairman Flanagan: You may.

(Quote from decision indicated.)

Mr. Booth: I say therefore that in the use of the sinking fund method such as Mr. McElfresh has testified, the sliding scale contemplates the use of the sinking method. It is improper and burdensome and contrary to this recent decision of the Supreme Court to apply a rate of interest in computing annual depreciation expense which is not identical with the rate of return which is used in determining the return this company is entitled to make.

Mr. Prettyman: We will discuss the Natural Gas case when it comes time to argue the case if the Commission wants us to, but at this time I want to point out there is nothing in the case that holds that this is the only method of computing depreciation, amortization, retirement,
1308 or whatever you have. The court repeatedly points out that the Commission had adopted this particular method. That is totally different, as Mr. Stevens has said, as potatoes are from eggs, from what we are talking about under the sliding scale in effect here. Here we have the retirement accrual method. There is nothing in this case that say you have to use the method adopted by the Commission in this particular case.

Mr. Booth: I just want to say that the company did argue that a lower rate of interest should be applied than the rate of return used and that was the issue.

Mr. Stevens: What case was that?

Mr. Booth: The Natural Gas Pipeline case. The Court and Commission both found it inequitable to the ratepayer to compute annual depreciation expense on the sinking fund method, and that is what we are doing unless the rate of return and interest rate are identical.

Mr. Prettyman: We are not computing depreciation on the sinking fund method; we are computing retirement accumulations on the scheme set up in the sliding scale.

Mr. Stevens: I think we are wasting time. I cannot believe Mr. Booth, after listening to this testimony, is still unaware of the fact that under the sliding scale we

1309 are setting up an empirical method agreed to by the Commission and the company for the purpose of determining reserve and accrual for retirement. It does not seem to me we are getting anywhere by further discussion of it and we would like to renew—

Mr. Booth: I would like to have the record show I resent Mr. Stevens' suggestion. Every time I present an idea of the case for the protection of the ratepayer and the public we are wasting time. I just cannot try the case according to the company's theory, and there are two sides in this case.

Chairman Flanagan: Are you through with your examination of Mr. Joseph?

Mr. Booth: Do you have anything further to add at this time, Mr. Joseph?

Mr. Joseph: I think not, Mr. Booth.

Mr. Booth: That is all.

* * * * * * * * * *

Mr. Stevens: I take it the case of the company and the Office of Price Administration and counsel for the
1319 Commission is closed?

Mr. Booth: Subject to the motions I have made, which the Commission has indicated they propose to take under advisement.

* * * * * * * * * *

Mr. Booth: I have two or three other brief tables I plan to offer which are merely calculations taken from
1345 either the Commission's report—I can do that now. I had overlooked—

Chairman Flanagan: Suppose you do it now.

Mr. Booth: I may or may not have a witness, but I will be glad to produce Mr. Dorfman who compiled the figures.

Chairman Flanagan: Very well.

Robert Dorfman

called as a witness on behalf of Office of Price Administration, having been first duly sworn, testified as follows:

Direct Examination

Mr. Booth: Will you state your name?

Mr. Dorfman: Robert Dorfman.

Mr. Booth: Where do you live?

Mr. Dorfman: New York City.

Mr. Booth: And who are you employed by?

Mr. Dorfman: The Office of Price Administration.

Mr. Booth: In what capacity?

Mr. Dorfman: Assistant Business Analyst.

Mr. Booth: What is the general nature of your duties?

Mr. Dorfman: To compile statistics, chiefly to deal
1346 with corporate profits and operations.

Mr. Booth: Have you prepared a table showing the Washington Gas Light Company surplus reserve for depreciation and dividends declared for the period 1936 to 1941, inclusive?

Mr. Dorfman: I have.

Mr. Booth: Is this a copy of it?

Mr. Dorfman: Yes.

Mr. Booth: I ask that this be marked as Exhibit No. 10 for identification.

Chairman Flanagan: It may be so marked.

(The document referred to was marked Exhibit No. 10 for identification.)

Mr. Booth: What was the source of your figures?

Mr. Dorfman: The annual report of the company.

Mr. Booth: The annual report of the company to the stockholders?

Mr. Dorfman: That is right.

Mr. Booth: This is the Washington Gas Light Company and not the consolidated company; is that correct?

Mr. Dorfman: Just the company itself.

Mr. Booth: You might read the figures for 1936 and 1941 in the record under each caption—that will just take a minute.

1347 Mr. Dorfman: The earned surplus as of December 31, 1936, was $5,398,927; for 1941, $6,271,726.

The depreciation reserve as of December 31, 1936, was $879,289; in 1941, it was $2,171,608.

Dividends declared during 1936 were $468,000; during 1941, $907,538.

Chairman Flanagan: Do those dividends include both dividends on preferred and common stocks?

Mr. Dorfman: Total dividends.

Mr. Stevens: There has been an increase in the amount of outstanding preferred during that period, has there not?

Mr. Dorfman: I believe there was an issue in this period.

Mr. Stevens: In the record of this case, that is clear.

Mr. Booth: I will admit that is a fact. It is not the intention to show anything else but the facts.

Mr. Stevens: Thank you.

Mr. Booth: Have you also prepared a table showing Washington Gas Light Company rate bases, earnings, rates of return and rate reductions for the years June 30, 1936, to June 30, 1941, inclusive?

Mr. Dorfman: I had most of the data transcribed from the report of the Public Utilities Commission.

1348 Mr. Booth: You have prepared such an exhibit?

Mr. Dorfman: Yes.

Mr. Booth: I ask that this be marked for identification as Exhibit No. 11. What is the source of this information?

Mr. Dorfman: Except for the year ending June 30, 1941, the 28th annual report of the Public Utilities Commission.

Mr. Booth: That is the District Commission?

Mr. Dorfman: Yes.

Mr. Booth: You took that out of that report?

Mr. Dorfman: Exactly.

Mr. Booth: Is it true that I supplied you with the figures for the year ending June 30, 1941, which I indicated I obtained from Mr. McElfresh?

Mr. Dorfman: The first two columns, and I computed the items in the third and fourth columns.

Mr. Booth: What is the average rate of return shown on the various rate bases for the period according to this table?

Mr. Dorfman: 6.86 percent.

Mr. Booth: Have you also prepared a table showing the Washington Gas Light Company rates of return on average capital employed on bases both before and after deducting income taxes for the period 1927 to 1934, inclusive?

1349

Mr. Dorfman: I have.

Mr. Booth: What is the source of that information?

Mr. Dorfman: The reports of the Federal Trade Commission.

Mr. Booth: That is the report of the Federal Trade Commission on utility corporations; is that correct?

Mr. Dorfman: Yes.

Mr. Booth: What Volume?

Mr. Dorfman: Volume 84-1.

Mr. Booth: And what page?

Mr. Dorfman: 882.

Mr. Booth: That will be all.

Mr. Stevens: I would like to ask the witness one or two explanatory questions without waiving my right to object here.

On the second exhibit—

Mr. Dorfman: What was that marked?

Mr. Stevens: That is apparently No. 11. Where did you get the figures in the second column under the heading Rate Base for the Year Weighted?

Mr. Dorfman: From the report of the Public Utilities Commission.

Mr. Stevens: Under the sliding scale arrange-

1350 ment? In other words, were those figures computed under the sliding scale arrangement?

Mr. Dorfman: I don't know.

Mr. Booth: I believe they are.

Mr. Stevens: You may believe they are, but what is the source of these figures?

Mr. Dorfman: They can be found in the 28th annual report of the Public Utilities Commission, page 82, the table at the top of the page.

Mr. Stevens: Off the record.

(Discussion off the record.)

Mr. Stevens: As to Exhibit 10 we have no objection subject to check, and as to Exhibit 11 we have no objection, also subject to check, although it is apparent that all Exhibit 11 is, is a copy of figures that appear on page 82 of the report of the Public Utilities Commission for the year 1940, the annual report. We do, however, have the basic objections to these exhibits in that they go to the basis of the sliding scale itself. If there is any purpose in these exhibits to use them for a purpose outside of the limitations as defined by the Commission in these proceedings, of course we object to them, but we agree they should be admitted if the Commission desires to do so, subject to
1351 that comment.

Mr. Booth: I do not propose to argue,—

Mr. Stevens: I do not, either.

Mr. Booth: Just a moment—that as a result of these exhibits the company is entitled to a rate increase, but exactly the reverse. So I don't want you to have any illusions as to the purpose of the exhibits, Mr. Stevens.

Mr. Stevens: Thank you.

Now, as to Exhibit 12, where did you get these figures in the second column under the words "Average capital employed"?

Mr. Dorfman: The last two lines on the page constitute, I think, a precise reference to the source.

Mr. Stevens: What does the note at the bottom of the page mean, "The appraiser value"; is the increase in the book value of the company's plant made as a result of independent valuations in 1903 and 1909?

Mr. Booth: Was that statement on the page of the report from which it was copied?

Mr. Dorfman: I don't remember. In the report from which this was copied there was a considerable discussion of the history of the corporations' assets, with thorough documentation, giving the reason for the major
1352 changes in those assets, and in the table as it ap-

peared in the text they had the phrase "Excluding added appraiser value and including added appraiser value", and I thought a short note explaining what the—

Mr. Stevens: This refers to 1903 and 1909?

Mr. Dorfman: Yes.

Mr. Stevens: Are you aware of the fact the Public Utilities Commission made a valuation of this company's properties in 1918 and again in 1934?

Mr. Dorfman: I was not aware of that.

Mr. Stevens: You were not aware of that?

Mr. Dorfman: No.

Mr. Stevens: Are these merely taken out of the report of the Federal Trade Commission?

Mr. Dorfman: Yes.

Mr. Booth: I hand you the page of the report, Mr. Stevens, from which it was copied. I will be glad, if you have any point about it, to offer the entire report of the Federal Trade Commission.

Mr. Stevens: I desire to point out the fact that the appraisals, as this note says, goes back to some old
1353 independent valuations in 1903 and 1909. Subsequent to those appraisals this Commission has conducted long valuation proceedings of this company.

Commissioner Hankin: Mr. Booth, what is the significance of this Exhibit 12?

Mr. Booth: I feel in determining the question of hardship with respect to the right of the company to an increase that it is pertinent to have before the Commission some historical earnings data, particularly to go back to the depression and during the last ten of fifteen years, and the source most readily available was this report of the Federal Trade Commission, which the Federal Trade Commission Chairman sent to Administrator Henderson with the suggestion that the report might be useful to us in this rate case.

Commissioner Hankin: What should we derive from this exhibit?

Mr. Booth: I will argue from this exhibit that this company has had an exceedingly fine record of earnings in de-

pression or out of depression, and if Mr. Stevens wants to make a point about the appraised value or value found by the Commission in 1934 or 1935, I suppose that figure, whatever the Commission found in 1935, could be compared with it. As a matter of fact, if you look at Exhibit
1354 No. 11 you will find that the rate base for the year as of June 30, 1936, was $21,052,619. So that for 1934 a higher figure was used. So it does not look as if any injustice has been done to the company by the use of either figure.

Mr. Stevens: The records of this Commission are very clear on these questions of valuation and on rates, and it seems to me that we are going pretty far afield when we inject into this proceeding the report of some other Federal commission which no one has had an opportunity to consider and which does not agree with any figures we have and does not agree with any figures the Public Utilities Commission has. If we can bring any figures like this into this proceeding it seems to me we open the door very wide. The company would have to check these figures. They are based, apparently, on valuations which have long since been superseded. I object to Exhibit 12 on the ground that it is not relevant, that this witness is not in a position to verify these figures or explain them; they are merely taken from a report of the Federal Trade Commission and even if they were proper and valid they would not have any place in this proceeding.

Mr. Booth: May I suggest this: The company this afternoon introduced into the record a rate reduction which they say they made in 1935. I take it that in view of that
1355 fact and also in view of the fact that Mr. Stevens questioned my use of the rate reductions made during the sliding scale period without consideration to that rate reduction, that it would be quite pertinent for the Commission to have the earnings data for the previous years in evidence—

Mr. Stevens: We will be glad to have the earnings data. There is no question about the earnings data.

Mr. Booth: Then I will ask—

Chairman Flanagan: Can you tie it up in any way that will assist us in determining the issue in this case, Mr. Booth?

Mr. Booth: Yes.

Chairman Flanagan: Please explain how.

Mr. Booth: The question in this case as to whether or not the company is entitled to an increase must in my judgment be predicated not purely upon the earnings of the company during the last year, even though I will admit on that basis alone, taking the company's figures on what would be a fair rate of return today, no rate reduction should be made. But I think in addition to that on the broad question of hardship to the company, as we are approaching a period of tougher times, it would be very
1356 interesting to see how the company got along during the past decade or fifteen years. This exhibit shows that based upon the capital employed the company has long enjoyed a period of exceptionally stable earnings. Its earnings have not been adversely affected during the last depression at all. They never knew we had a depression.

Commissioner Hankin: What you say may be perfectly correct, but is the company maintaining it has been maltreated in past years?

Mr. Booth: No, I think what they are afraid of is that they have got to absorb some of these war taxes.

Mr. Stevens: Now—

Commissioner Hankin: They have not claimed they have not been given sufficient earnings in past years, have they?

Mr. Stevens: Mr. Hankin, may I say this: Our objection to this exhibit is to the basis. From the figures that are used in it, and in our judgment they are unreliable and I do not like to have before the Commission unreliable figures. and neither does Mr. Prettyman. It is getting late and I would be quite willing, subject to you rapproval, Mr. Prettyman, to withdraw our objection to this exhibit and let it go in.

Commissioner Hankin: I kind of thought that, just when I was about to sustain your objection.

1357 Mr. Stevens: Mr. Hankin, I would love to have you sustain an objection of mine; that would be a moment of pride, but I feel it should go in subject to check by the staff, because the figures used are not reliable figures.

Chairman Flanagan: It may be admitted for whatever value it may possess.

Mr. Booth: I will agree to that.

(The document referred to was received and marked Exhibit No. 12.)

Mr. Booth: Exhibits 10 and 11 are also admitted?

Chairman Flanagan: Yes.

(Exhibits 10 and 11 were thereupon received in evidence.)

Commissioner Hankin: Mr. Booth, I am rather surprised in looking at these exhibits you seem to have overlooked an important element. Have you made a computation of what was the return on the common stock or on the property attributable to the common stock of the company after deducting interest and fixed charges?

Mr. Booth: I have not, but we will be very glad to do it, or the Commission can instruct its chief accountant to do it and I know he will be glad to make the calculation and have it go into the record.

1358 Commissioner Hankin: I think that would be interesting because, after all, so far as the bonds are concerned, the property represented by bonds should not have an interest. The preferred stock carries fixed dividends. The remainder of the property represented by the equity is what counts in determining what is the rate of return, and if that is low it ought to be raised, and if it is too high it might be lowered.

Mr. Stevens: Mr. Chairman, we should like to reserve the right if at any future time these exhibits take on some material importance to renew our objection to them at any future time.

Chairman Flanagan: Very well.

Mr. Booth: There is another exhibit which I had a member of the technical staff of the Federal Power Commission make, a calculation of the proposed rates of the Washington Gas Light Company on a thermal basis applicable to housekeeping consumption. It was on the basis of that table that I addressed my question to Mr. Boothby this morning about where Washington, D. C. house heating ranks in the ranking of this group of 25 communities. I did not have an opportunity to call this person over to
1359 the hearing today. It is only a one page table. I would like to submit it to the Commission's staff and the company's staff for checking. If they find no inaccuracies in it, and it will be based upon the same calculations shown in Exhibit No. 6, may it be understood that that can go in as Exhibit No. 13.

. . . . . .

1379 Mr. Stevens: May I suggest, Mr. Chairman, if it is necessary to file any memoranda for the enlightenment of the Commission that they be filed by Friday or Monday at the latest. It seems to me we have already had enough argument in this case to develop all of the idea anyone might possibly have and that oral argument is unnecessary and would merely delay the proceeding.

Mr. Booth: We have three motions before the Commission. The rules provide where a party seeks oral argument, the Commision shall hear it. I think, this case being of considerable importance and presenting a lot of novel questions, a reasonable opportunity ought to be allowed for argument and brief. I think I will be ready to argue this case within a week, but I would need a couple of weeks to file a brief.

Mr. Stevens: I say again, Mr. Chairman, this case has already been argued adnauseum throughout its course. We would like to put in a memorandum of cases of whatever may be pertinent.

Mr. Prettyman: In response to what Mr. Booth just said, I would like to quote the rule Mr. Booth referred—

1380 Mr. Booth: I beg pardon; I thought that was what it said.

Mr. Prettyman: Your last guess is correct.

Mr. Booth: I was mistaken.

Mr. Prettyman: Rule 12.15 does not say you may both argue and file a brief.

Commissioner Hankin: That does not include both.

Mr. Prettyman: No, but Mr. Booth said he was entitled to oral argument. We have suggested a written memorandum of authorities would be a more useful thing to the Commission.

Chairman Flanagan: Which do you prefer, Mr. Booth, oral argument or file a brief?

Mr. Booth: I will be ready earlier with oral argument.

Chairman Flanagan: Could you file a brief in five days, Mr. Booth?

Mr. Booth: No.

Chairman Flanagan: How long will it take?

Mr. Booth: It will take me two weeks. I have a brief due the New York Public Service Commission on Thursday. We had a brief due on Saturday with the Montana Commission. My legal staff on this work is absolutely limited. It would be easier for me to present an argument on it and that I would prefer to do not sooner than next Monday.

1381 Commissioner Hankin: I am very much afraid that oral argument will not help us as much as a written brief, which we could study and take into consideration in deciding the various items that have been brought out in this proceeding.

1382 Mr. Booth: That is entirely up to the Commission. If we are to file a brief I would like an adequate opportunity, and I do not see how we could do it really inside of two weeks. I have tried two cases recently, one before

the New York Commission and another before the Montana Commission, and those are only two of the cases which we are in. I under-estimated the time necessary for preparation of brief in the Montana Commission and I was forced to ask for additional time; for that reason and with the very difficult legal questions that are involved here, I think I would write a brief on the questions that I raised in the argument on the motions that I made to the Commission. I sincerely believe the Commission ought to have—

Mr. Stevens: I object strenuously to that delay.

1385 Chairman Flanagan: Mr. Stevens, I think five days is too short a time, but I think Mr. Booth should be ready in ten days to file a brief, and we will set ten days from today for filing briefs.

Mr. Booth: Brief and argument?

Chairman Flanagan: Do you want to argue, too?

Commissioner Hankin: After the briefs are filed the Commission can determine whether it wants to hear oral argument.

Mr. Stevens: I think that is satisfactory.

Commissioner Hankin: With reference to briefs, I understand they are to be filed within ten days.

Chairman Flanagan: Yes.

Mr. Booth: We will try to get it ready. I think if Mr. Stevens really wants to be helpful and he has a memorandum now he might make it available to us and if I have any I will be glad to—that is, on some of the special points—I will be glad to send it to him so we will be able to answer each other's position.

Mr. Stevens: I think what you are here for is to be helpful to the Commission only in matters in which the Office of Price Administration is interested, and it is not for you—

Commissioner Hankin: No, you are quite mis-

1386 taken about what counsel before this Commission are to do in the matter of filing briefs. I actually expect counsel will file briefs on all questions that were raised and supply us with the necessary authorities.

Mr. Stevens: Then we shall have to expand our memorandum.

Chairman Flanagan: Ten days from tomorrow for filing briefs; September 25th.

(Whereuopn, at 6:50 o'clock p. m., Monday, September 14, 1942, the hearing was concluded.)

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1390 *Proceedings*

Chairman Flanagan: The hearing will come to order, please.

Mr. Harrison: If the Commission please, by Order No. 2380 dated September 25, 1942, the Commission reopened the proceeding in formal Case No. 316 on the petition of the Fort Davis Citizens Association and the Washington League of Women Shoppers for leave to intervene and introduce testimony. I suppose it is appropriate at this time to have those parties enter their appearances.

Chairman Flanagan: Will the parties give their names to the Reporter, please?

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1391 Mr. Booth: If the Commission please, I have a supplemental brief which I would like to file, either now or after the close of the statements to be made on behalf of various consumers and citizens associations. I have notified the Secretary of the Commission of my intention to seek the permission of the Commission to file such a brief, and Mr. Milligan advised me over the telephone—

Chairman Flanagan: You may file the brief now.

* * * * * * * * * * *

1431 Is there any other matter in the record you think should be further clarified, Mr. Booth?

Mr. Booth: The question in my mind is this: The company having withdrawn its objection to the exhibit and the exhibit having gone into the record, the testimony which

had been stricken by the Chairman also becomes part of the testimony which is part of the record.

Chairman Flanagan: I think the matter of the method used by Mr. Joseph, in spite of objection and rulings, got into the record very clearly in various ways, Mr. Booth.

Mr. Booth: You want the record to stand the way it is, I take it?

Chairman Flanagan: I am not objecting to the record; you raised the question.

1432 Mr. Booth: I raised the question whether or not as a result of the waiver of objection by counsel for the company to Exhibit 8 and its subsequent admission, whether or not that automatically restored as evidence the testimony which Mr. Joseph had given in the record with respect to the exhibit in so far as it had been stricken, and I wanted that question cleared up.

Chairman Flanagan: I would say in my opinion the only thing that was stricken was one item with respect to depreciation.

Mr. Booth: And that still remains stricken, or it is admitted as a result of the admission of the exhibit?

Chairman Flanagan: Off the record.

(Discussion off the record.)

Mr. Prettyman: Mr. Chairman, it seems to me you brought the matter into perfectly clear focus on page 839 where you asked Mr. Joseph "You have not taken the rate of depreciation specifically set out in the sliding scale arrangement", and he answered "I have changed that to conform to the sinking fund method of depreciation". You then ruled out the answer. That does not have anything to do with the exhibit.

Chairman Flanagan: I was going to say that re-
1433 gardless of the striking of that particular phase of the testimony, the exhibit is clear on its face, and the statement to which you have just referred clarifies it even more. So I do not think it is necessary to introduce additional testimony with respect to that one point.

Mr. Booth: It seems, Mr. Chairman, it is rather inconsistent to admit an exhibit in evidence and then have the record show that certain testimony with respect to it has been stricken from the record.

Chairman Flanagan: What is your desire? Is it that we reopen it and permit you to go into that question again?

Mr. Booth: No. The effect of the Commission's ruling admitting the exhibit also has the effect of reversing the ruling of the majority of the Commission striking such testimony.

Chairman Flanagan: Whatever Mr. Joseph wanted to get in was put into the record; is that so, Mr. Booth?

Mr. Booth: I cannot see how that can be so if part of the testimony is stricken.

Chairman Flanagan: I am fully convinced Mr. Joseph's idea is fully reflected in the record and in the ex-
1434 hibit; there can be no doubt about that. The ruling is the record stands.

Commissioner Hankin: For our information, is that material part of the case or is it not?

Chairman Flanagan: It is in the record. As to whether it is material or immaterial I do not think needs to be decided here; it is to be given weight by the Commission in the consideration of the case as a whole.

1438 **PROCEEDINGS.**

Chairman Flanagan: The hearing will come to order, please.

Mr. Harrison, will you proceed?

Mr. Prettyman: Will you pardon an interruption, Mr. Harrison?

Mr. Harrison: Yes.

Mr. Prettyman: If the Commission please, in addition to the appearances heretofore noted for the Gas Company, we would like to note also the appearance of Mr. Renah F. Camalier as associate counsel for the Company.

Mr. Booth: May we also show the appearance of Mr. Leon Henderson, Price Administrator of the Office of Price Administration, on behalf of the Honorable James F. Byrnes, Director of the Office of Economic Stabilization, David Ginsburg, general counsel, Mr. Nathaniel Nathanson, assistant general counsel, and myself, as utilities counsel for the Office of Price Administration.

Mr. Harrison: If the Commission please, under date of October 19, the Price Administrator of the Office of Price Administration, filed a petition with this Commission on behalf of the Honorable James F. Byrnes, Director of Economic Stabilization, in which petition the petitioner
1439 asks that the Commission's Order No. 2401 be vacated and that the proceeding be reopened for the purpose of receiving further evidence and hearing further argument, and that the petitioner be allowed to intervene and file a brief in such reopened proceedings.

Under date of October 23, by Order No. 2404, the Commission reopened this proceeding and permitted the Price Administrator, on behalf of the Director of Economic Stabilization, to intervene, and reopened the proceeding for the purpose of receiving from the Office of Price Administration on behalf of the Director of Economic Stabilization, additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and intervention was granted for such purpose.

If the Commission please, the petition filed on that date states that in order to effectuate the provisions of paragraph 4 of Title VI of Executive Order No. 9250, and section 1 of the Act of October 1, 1942, the Director of Economic Stabilization, on October 14, 1942, has by order, No. 1, designated the Price Administrator of the Office of Price Administration as representative of the Director of
1440 Economic Stabilization, to receive notices of increase in common carrier and other public utility rates and charges, with authority to issue appropriate requests for the receipt of such notices and to intervene and participate

in proceedings before Federal, State, and municipal authorities.

Inasmuch as that statement is made in the petition, it seems to me it might be appropriate for the Office of Price Administration to file a copy of Order No. 1 referred to, so that the Commission may be advised of the nature of the authority of the Price Administrator in this proceeding.

Accompanying, and received by the Commission at about the same time as the petition to intervene to which I have referred, the Price Administrator addressed a letter to the Chairman of the Commission under date of October 16, 1942, in respect to this particular matter. I do not have sufficient copies to offer this as an exhibit, but I think it would be well to have that letter as part of the record in this proceeding, as well as in the Commission's files, and with the Commission's permission I shall file a copy with the reporter and let him copy it into the record, or I will read the letter at this time.

Commissioner Hankin: Suppose you read the letter.

Chairman Flanagan: You may read the letter,
1441 and the reporter will then copy it into the record.

Mr. Harrison: This is dated October 16, 1942, and addressed to Mr. James H. Flanagan, Chairman, Public Utilities Commission, Washington, D. C., RE: Washington Gas Light Company, Formal Case No. 316:

"Dear Mr. Flanagan:

"My attention has been called to the opinion and order issued by your Commission on October 13 authorizing an increase in the rates of the Washington Gas Light Company and to the dissenting opinion issued by Commissioner Hankin in this case. I have observed that your order provides that the rate increase is to be retroactive as of September 1, 1942. I have also noticed that your order authorizing the increase in rates calls the Company's attention to the provisions of the Act of October 2, 1942, amending the Emergency Price Control Act of 1942 to wit as follows:

'The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: Provided, That
1442 no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consent to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.'

I have also read certain newspaper statements in which appear a statement attributed to you as follows:

'I am assured by the company that it will give appropriate notice to the Hon. James F. Byrnes in compliance with the recent Act of Congress amending the Emergency Price Control Act of 1942, and that such notice will be accompanied by a copy of the findings and order of this commission.'

"This letter is to advise you that this Office has been designated by the Honorable James F. Byrnes, Director of Economic Stabilization, to represent his Office for the purpose of administering paragraph 4, Title VI, relating to notice and intervention in utility and common carrier increase cases of the Executive Order issued by the
1443 President of the United States on October 3.

"It is my judgment that the action of the Commission in issuing an order, without prior notice by the Company to the Director of Economic Stabilization, authorizing the Company to charge rates higher than those in effect on September 15, is violative both of the letter and the spirit of the Act of October 2. To deny the Director of Economic Stabilization an opportunity to intervene prior to the entry of such an order is effectively to destroy his ability to demonstrate why a proposed increase in utility rates may conflict with the program of the national government to prevent further increases in the cost of living. My

legal staff has been directed to take appropriate measures to have this order rescinded.

"I, therefore, request your Commission to re-open the proceedings and rescind the order in this case. I am authorized to state that the Director of Economic Stabilization joins in this request.

"Sincerely yours, (s) Leon Henderson, Administrator."

Now, if the Commission please, in view of the fact both by Mr. Henderson's letter and the petition filed with the Commission it has been stated that the Director of Economic Stabilization has authorized the Price Administrator to act in his behalf, and in view of the fact this Commission has had no communication from either the Director of Economic Stabilization or the Price Administrator indicating delegation of such authority, I think it may be appropriate for the Office of Price Administration to put into the record the letter showing that authority.

1444

Mr. Booth: That order is now a directive known as Directive No. 1. It has been published in the Federal Register, so I understand, and I had intended to bring a copy with me. I do not know that I have it right at this moment, but a copy will be submitted as part of the record in this case: if the reporter will leave a space at this particular part of the record, I will give the Federal Register reference.

Mr. Prettyman: If the Commission please, under date of October 14, 1942, the Washington Gas Light Company served notice on the Honorable James F. Byrnes, Economic Stabilization Director, White House, Washington, D. C., which I should like to read and have incorporated in the record.

Chairman Flanagan: Very well.

Mr. Prettyman: (reading)

1445 "Washington, D. C. October 14, 1942

"Honorable James F. Byrnes
Economic Stabilization Director
The White House
Washington, D. C.

"Dear Sir:

"We hand you herewith copy of Order No. 1458 of the Public Utilities Commission of the District of Columbia, dated December 13, 1935, which reduced gas rates and established a sliding scale arrangement with respect to rates, tolls, charges and tariffs of Washington Gas Light Company.

"This sliding scale arrangement was established pursuant to Paragraph 18 of the Act of Congress creating the Public Utilities Commission of the District of Columbia (37 Stat. 974) at the conclusion of valuation and rate proceedings held by the Commission and after public hearings in which the full information necessary to determine the reasonableness of the elements of the sliding scale arrangement was adduced.

"Since the establishment of the sliding scale arrangement and pursuant to it, annual hearings for the determination of rates of Washington Gas Light Company have been held and these have resulted in further rate reductions to the consumers of gas in the District of Columbia in the years 1936, 1938, 1939 and 1940. From time to time
1446 since 1935, the Company with the approval of the Public Utilities Commission has sold its securities to the general public, and registration statements have been filed with the Securities and Exchange Commission which included descriptions of the sliding scale arrangement.

"Pursuant to notices dated March 20, 1942 and July 21, 1942, the annual hearings under the sliding scale arrangement were commenced by the Public Utilities Commission on August 18, 1942 and were continued on August 19, September 4, 8, 11, 14 and 30. The Office of Price Administration was given leave to intervene in the proceedings and

participated therein. Testimony was adduced through witnesses for the Commission, the Company, and the Office of Price Administration. Subsequently, briefs were filed by counsel to the Company and counsel for the Office of Price Administration and arguments were had; also counsel for the Office of Price Administration was permitted to file a supplemental brief.

"On October 13, 1942, the Public Utilities Commission issued its Opinion and Order No. 2401, copy of which is herewith enclosed, and which Order promulgates an increase in rates to be charged by Washington Gas Light Company, which rates are effective as of September
1447 1, 1942, as provided by the sliding scale arrangement.

"In accordance with the Emergency Price Control Act of 1942, as amended October 2, 1942, we hereby give notice of the increase in rates and charges of this Company.

"Yours respectfully,

"WASHINGTON GAS LIGHT COMPANY

"By: Marcy L. Sperry, President."

I might state a copy of that notice was transmitted to this Commission, and I should like to have the reporter copy the wording of the letter in the record and I have extra copies of the letter.

Commissioner Hankin: May I see the letter, please?

Mr. Prettyman: Yes (hands letter to Commissioner Hankin).

Also, if the Commission please, on October 30, 1942—

Commissioner Hankin: Mr. Prettyman, may I ask a question about this letter of October 14? Do you happen to know at what time of the day this letter was sent over to Mr. Byrnes?

Mr. Prettyman: It was delivered in person by the secretary of the Washington Gas Light Company at the office of Mr. Byrnes at 3:25 p.m., Thursday, October 15.

1448 Mr. Booth: October what?

Mr. Prettyman: October 15.

Commissioner Hankin: I see.

Mr. Booth: Is that the correct date? I don't know; I am just asking you to verify it.

Mr. Prettyman: I am sure it is the correct date; 3:25 o'clock p.m., Thursday, October 15, that letter was personally delivered at the office of the Honorable James F. Byrnes at the White House by the secretary of the Washington Gas Light Company.

Commissioner Hankin: The reason I ask is, this letter dated October 14 makes reference to an opinion and Order No. 2401 which was enclosed, and I was wondering whether you also enclosed a copy of the dissent in that case.

Mr. Prettyman: Yes, sir. The following documents were handed in at the same time:

The letter dated October 14, a copy of which you have in your hand;

A copy of Order No. 1458 of this Commission dated December 13, 1935;

A copy of the Opinion and Order No. 2401, dated October 13, 1942, certified;

1449 A copy of the Dissenting Opinion of Commissioner Hankin to Order No. 2401.

Commissioner Hankin: That was the draft, or the final copy?

Mr. Prettyman: It was the copy that we had; it was officially duplicated.

Commissioner Hankin: Was it in mimeograph form?

Mr. Prettyman: A mimeograph copy.

Mr. Booth: If the Commission please, I have a file which was referred by the Director of Economic Stabilization to the Office of Price Administration in connection with this proceeding, and it does contain a complete copy—

Commissioner Hankin: Then, Mr. Prettyman, I notice in this letter of October 14 you say: "In accordance with the Emergency Price Control Act of 1942, as amended October 2, 1942, we hereby give notice of the increase in rates and charges of this Company." The statute required more than merely notice, did it not?

Mr. Prettyman: Yes, it required consent to intervention, and we did not object to the intervention of August 18, which was the first order of business in this proceeding.

Commissioner Hankin: But there was no notice
1450 of your consent to intervention by the Director of Economic Stabilization accompanying this letter.

Mr. Prettyman: At that time the Office of Price Administration was a party to this proceeding, having intervened without our objection on August 18.

I was about to read a further consent to the further intervention, which is the next document I want to put into the record.

If the Commission please, on October 30, 1942, the Washington Gas Light Company addressed to this Commission a communication which I should like to have the reporter copy into the record.

Chairman Flanagan: Very well.

Mr. Prettyman: It is dated October 30, 1942, and addressed to the Public Utilities Commission of the District of Columbia:

"We have received your Order No. 2404, reopening the hearings in Formal Case No. 316. While, as we have previously advised the Director of Economic Stabilization, we feel that the Act of October 2, 1942, has been fully complied with, we nevertheless consent to the intervention in this proceeding of the Price Administrator of the Office
1451 of Price Administration, on behalf of the Director of Economic Stabilization.

"Respectfully,

"WASHINGTON GAS LIGHT COMPANY

"By: Marcy L. Sperry, President."

The last letter I read calls attention to the fact that we had advised the Director of Economic Stabilization that we were of the opinion that the Act of October 2, 1942, had been fully complied with. I should like to put a copy of

that letter referred to, in the record. I would like to read it and have the reporter copy it into the record.

Chairman Flanagan: What letter is this, Mr. Prettyman?

Mr. Prettyman: On October 17 we wrote a letter to the Honorable James F. Byrnes, Economic Stabilization Director, and if you will notice, in the letter we wrote the Commission consenting to the intervention, we referred to our letter to him. The letter I have just read states:

"While, as we have previously advised the Director of Economic Stabilization, we feel that the Act of October 2, 1942, has been fully complied with,"—and that advice to him was in the letter dated October 17.

Chairman Flanagan: Any objection to incorporating this letter in the record?

1452 Mr. Booth: That is the letter of October 15?

Mr. Prettyman: October 17.

Mr. Booth: There is a further letter?

Mr. Prettyman: Yes.

Mr. Booth: I suppose counsel for the Company might read it—it is one of your letters?

Mr. Prettyman: Yes, to Mr. Byrnes.

Mr. Booth: How long a letter is it?

Mr. Prettyman: Two pages.

Chairman Flanagan: Without objection it may be read into the record.

Mr. Prettyman: It is dated October 17, 1942, and is addressed to the Honorable James F. Byrnes:

"Our attention has been called to your letter of October 15th, addressed to Mr. Leon Henderson, Price Administrator, in which you call attention to the press account of the order of the Public Utilities Commission of the District of Columbia entered October 13, 1942, authorizing certain increases in gas rates to be charged by this Company, and in which you said in part,

'It came to me as a surprise that such action on gas rates in the District should be taken so soon after the en-

1453 actment of the emergency legislation to stabilize the

cost of living and the issuance of the President's executive order thereunder without more deliberate consideration of the effects of such action on national policy and the conformity of such action with the letter and spirit of the law.'

"Obviously, your letter to Mr. Henderson was written before you received our letter notice which was delivered October 15th, with which we enclosed a copy of the order and opinion of the Commission. Contrary to your letter to Mr. Henderson, deliberate consideration of the factors mentioned in your letter was given by the Public Utilities Commission as is evidenced in their order and opinion and by the proceedings in the case.

"The Company since 1935 has operated under a Sliding Scale Arrangement promulgated by the Commission, under which, in addition to a rate reduction effected in 1935, additional reductions were made in the years 1936, 1938, 1939 and 1940. Pursuant to the Sliding Scale Arrangement the annual hearing for the fixing of rates for the year beginning September 1, 1942, was commenced on August 18, 1942, in accordance with orders of the Commission dated
1454 March 20, 1942, and July 21, 1942. Hearings were also held on August 19th, September 4th, 8th, 11th, 14th, and 30th. At the outset of these hearings, the Office of Price Administration filed a petition for leave to intervene. This petition was granted. Counsel for the Office of Price Administration appeared at all hearings, presented testimony, cross-examined witnesses for the Company and for the Commission and submitted two briefs. Both briefs were signed by Mr. Leon Henderson, the Price Administrator.

"The proceedings in this case were in all respects in accord with and in anticipation of the provisions of the amendment of October 2, 1942, to the Emergency Price Control Act. We feel it our duty, therefore, promptly to call these facts to your attention so that any misunderstanding with respect to the deliberate nature of the hear-

ings and of the decision of the Public Utilities Commission may be corrected.

"Yours respectfully,

"WASHINGTON GAS LIGHT COMPANY

"By: Marcy L. Sperry, President."

Commissioner Hankin: Mr. Prettyman, of what significance is this letter to this proceeding?

Mr. Prettyman: It is simply put in to complete the record, because in our notice to the Commission we
1455 call attention to the fact we had advised the Director of Economic Stabilization in regard to our view—

Commissioner Hankin: But suppose you have a certain view as to the proceedings in this Commission, of what significance is this letter to this proceeding, this letter you have written to the Director of Economic Stabilization?

Mr. Prettyman: It simply makes what has happened a part of the record.

Commissioner Hankin: Just in order to swell the record?

Mr. Prettyman: No, not to swell the record, but to complete the record.

Commissioner Hankin: If there is some significance in this letter, I would like to see it, because we have to take these things into consideration.

Mr. Prettyman: The Commission's counsel has put certain documents in the file, and we want the file to show (1) that we have filed the notice required by the Act—

Commissioner Hankin: That is significant.

Mr. Prettyman: (continuing)—(2) that we consented to the intervention.

Commissioner Hankin: That also is significant.

1456 Mr. Prettyman: In the notice to this Commission consenting to the intervention we referred to the fact we had advised the Director of Economic Stabilization that in our opinion the Act had been fully complied with,

and in order that the Commission might be fully advised as to what we told him, we want the letter in the record.

Commissioner Hankin: Is not the significance of the letter of October 17 this: You have written to the Director of Economic Stabilization on October 14 that you are giving him notice to the effect the rates had been increased, and that is all; then, later, on October 30, you consented to the intervention by the Director of Economic Stabilization through the Price Administrator. Now, in the meantime, on October 17, you wrote a letter which to my mind bears this significance, and I wish you would correct me if I am wrong, that you do not need to consent to his intervention because the Price Administrator had already intervened?

Mr. Prettyman: That is correct. That is my view. My view is there was no necessity for consent to reopening the case or for a second petition to intervene. He was already a party to the proceeding. Nevertheless we consented again, and if he petitions to intervene again we will
1457 consent again, I assume. He is already a party. I do not see any damage done by consenting.

Mr. Booth: I would like to take up as soon as possible the motion filed—

Commissioner Hankin: Just a minute. Mr. Prettyman is not through yet.

Mr. Booth: Just a moment—

Chairman Flanagan: Do you consent to this interruption, Mr. Prettyman?

Mr. Prettyman: I had some more documents to put in—

Mr. Booth: I think the motion should be given precedence, as soon as you have taken a reasonable time to argue your case in support of your position. I take it this letter constitutes part of the argument in favor of your position.

Mr. Prettyman: The only argument I have interjected was in reply to Mr. Hankin's question.

Chairman Flanagan: Will you please continue, Mr. Prettyman?

Mr. Prettyman: I should also like to introduce into the record the reply of the Honorable James F. Byrnes to our letter of October 17. I have the original in my hand. I should like to read it and introduce a copy:

1458 "Executive Office of the President
Office for Emergency Management
Office of Economic Stabilization
Washington, D. C.

October 21, 1942

"Dear Mr. Sperry:

"Receipt is acknowledged of your letter of October 17.

"My letter of October 15 to Mr. Leon Henderson, Price Administrator, calling his attention to the authorization for increased gas rates on the part of your Company issued on October 12, 1942 by the Public Utilities Commission of the District, was prompted by my understanding that no compliance with Section 1 of the Act of October 2, 1942 was had preliminary to such authorization. I was concerned at the moment with the policy question of requiring compliance on the part of all with the specific provision of the Act in question to the end that the general objectives of such Act might be secured. What action Mr. Henderson, to whom, in his capacity as Price Administrator, I have delegated the administration of Section 4, Title VI of Executive Order 9250, should take, after you have complied with the Act of October 2, 1942, is a matter that I must leave to his judgment, to be exercised in the light of the broad
1459 purposes inducing the enactment of the Act of October 2, 1942.

"Very truly yours,

"/s/ James F. Byrnes, Director."

Chairman Flanagan: Mr. Booth.

Mr. Booth: If the Commission please, on Saturday—I think it must have been very late Saturday morning—I

asked the secretary of the Commission to extend us the courtesy of filing a motion—

Chairman Flanagan: It was Saturday afternoon, was it not, Mr. Booth?

Mr. Booth: It was about 1:00 o'clock, and I want to say for the record I appreciate the courtesy extended by the Commission and its secretary in that regard.

However, I want to take up that motion now and make a statement in support of it.

In view of the statements that have been made by counsel for the Company with respect to their position in connection with their alleged previous compliance with section 1 of the amendment to the Price Control Act, enacted on October 2, I would like to ask counsel for the Company if they would be good enough to state now in the record as to just what their position is with respect to the date,
1460 the exact date, on which they believe they have a legal right to take advantage of the Commission's Order of October 13 approving an increase in the rates of the Washington Gas Light Company and the date when, on the basis of the present status of the proceeding, the Company feels it can begin to charge its customers retroactively to September 1 the higher rates which were approved by the Commission in its order of October 13.

I wondered if the Company would be kind enough to make a statement setting forth their position and their present intention in order that we and the public may understand just what their position is on that very important question.

Chairman Flanagan: Is counsel prepared to make such a statement?

Mr. Prettyman: If the Commission please, the Act of October 2, 1942, provides that no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives 30 days' notice to the President or such agency as he may designate. It is already in this record

that the Company filed a notice of proposed increase in its rates and charges at 3:25 p. m., Thursday, October 15,

Commissioner Hankin: But there is also a provi-
1461 sion that you must also consent to his intervention. Now, as of what date does that consent have to take place? Can you give the Administrator notice on October 15, and then on the 29th day, after that, say, "I consent to your intervention"?

Mr. Prettyman: We consented to the intervention after he had filed his new petition to intervene, the second time. We consented to his intervention, or had not interposed any objection, as the first order of business on the first day of the hearing, which was August 18.

Mr. Booth: May I pursue this—

Commissioner Hankin: Pardon me. In other words, according to your view, Mr. Prettyman, the Company has a legal right to put its increased rates into effect retroactively beginning November 15; is that right, or November 14?

Mr. Prettyman: There has been no statement in regard to the retroactivity of the rates at all; I am not expressing any opinion on that at all. I say the Act has been complied with. It gives 30 days notice. The fact of the matter is, as you know, Mr. Hankin, the sliding scale arrangement defines the rate year of the Washington Gas Light Company and says the rate year is from September 1 to August 31;

every year since the sliding scale went into effect
1462 there has been an order of the Commission determining rates for the rate year. The order this time does exactly the same thing it has always done; it fixes the rates for the rate year of the Washington Gas Light Company which began on September 1 and which is now passing. What is to be done when the date comes around, I don't know.

Commissioner Hankin: Mr. Booth, will you please sit down for a moment? I would like to ask Mr. Prettyman some questions.

I would like to know your view about the order, because, after all, there may be some doubt as to the meaning of some of the words in it and we ought to have it clear as to what it actually means.

The order, as I recall—may I have a copy of the order—in section 2 the order says the rates, tolls, and charges to be charged by the Washington Gas Light Company, and so forth, shall be in accordance with the following rates.

Now, that apparently looks to the future, "shall be" and "to be" charged means at some time in the future. However, in section 3 of the order it says:

"Under the terms of the sliding scale arrangement, and so forth, the rates, tolls, and charges herein pre-
1463 scribed become effective as of September 1, 1942."

Now, what does this mean? Does it mean that the Company may, on November 15, begin charging rates and adding on the amounts which became effective as of September 1, or does it mean that at the expiration of the 30-day period you are going to begin charging rates which became effective at some time in the past?

Mr. Prettyman: If Your Honor please, in the sliding scale order, which is Order No. 1458, dated December 13, 1935, finding number 2, section 1, definition of terms, provides:

" 'Rate year' shall mean the 12 months period from September 1 to August 31 inclusive for which rates are being determined."

Now, the order of the Commission to which you have referred fixes the rates of the Washington Gas Light Company for this rate year which began September 1. That order speaks for itself. We have given 30 days' notice before we put increased rates for this rate year into effect. As we view the situation that means just exactly what it says, that on November 15, or whatever 30 days is, the Washington Gas Light Company proposes to increase its rates for the rate year.

1464 Commissioner Hankin: Prospectively; is that it?

Mr. Prettyman: I think the rate year begins September 1.

Commissioner Hankin: In other words, your understanding of the order is that as of November 14, which is the expiration of the 30 days, you will not only charge the increased ratae but will also add on for whatever gas has been consumed at the incremental rate?

Mr. Prettyman: I think that is the clear legal situation.

Commissioner Hankin: I simply wanted to know what was meant by this order.

Mr. Prettyman: I think that is the clear legal situation at the moment, yes, sir.

Chairman Flanagan: Mr. Booth.

Mr. Booth: Do I understand that is the present intention of the Company, Mr. Prettyman?

Mr. Prettyman: That is as far as I will state; that is my understanding of the legal situation at this moment.

Mr. Booth: You don't know whether the Company intends to take advantage of your construction of the legal situation?

Mr. Prettyman: Sometimes they do and some-
1465 times they don't.

Mr. Booth: If the Commission please, I would like to make a statement in support of the motion which was filed on Saturday, October 31, upon behalf of the Office of the Director of Economic Stabilization by Leon Henderson, Price Administrator of the Office of Price Administration.

By this motion we seek amendment of the Commission's Order of October 23, 1942, so as to permit full intervention as a party by the Price Administrator in behalf of the Director of Economic Stabilization, to make him a party to this proceeding without restriction as to the type of evidence to be presented; and that the Commission vacate its order of October 13, 1942.

On October 2, 1942, Congress adopted an amendment to the Emergency Price Control Act of 1942 to aid in preventing inflation, and for other purposes. The purpose of this Act as set forth in section 1 is as follows:

"That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living;
and, except as otherwise provided in this Act, such
1466 stabilization shall so far as practicable be on the
basis of the levels which existed on September 15, 1942. The President, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: Provided, that no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase."

Under section 2 of the same Act, the President was empowered to promulgate regulations from time to time as may be necessary and proper to carry out the provisions of the Act and was also authorized to exercise any power or authority conferred upon him by this Act through any department, agency, or officer as he may direct. By this legislation Congress brought under regulation prices whose effective control by the earlier price control act was not
possible. Wages also come under more drastic regu-
1467 lation, and other measures were made possible for
the purpose of preventing inflation.

On the 3rd day of October, 1942, the President issued Executive Order No. 9250 in which the President estab-

lished the Office of Economic Stabilization and appointed the Honorable James F. Byrnes as the Director thereof. In that Executive Order the President stated:

"The guiding policy of the Director of the Office of Economic Stabilization and of all departments and agencies of the Government shall be to stabilize the cost of living in accordance with the Act of October 2, 1942; and it shall be the duty and responsibility of the Director and of all departments and agencies of the Government to cooperate in the execution of such administrative programs and in the development of such legislative programs as may be necessary to that end."

The President also declared that the Office was set up in order to control, insofar as possible, the inflationary tendencies and the vast dislocations attendant thereon which threaten our military effort and our domestic economic structure, and for the more effective prosecution of the war.

A number of important steps, pursuant to that
1468 legislation, very important steps, have been taken by the President and the Director to carry out the policy of that Act.

By the same order the President directed the Director of Economic Stabilization to receive notices under section 1 of the Act of October 2, and subsequently, the Director of Economic Stabilization by Directive No. 1 designated the Price Administrator of the Office of Price Administration as his representative to receive notices of increases in common carrier or other public utility rates and charges and to intervene and participate in proceedings before Federal, State, and municipal authorities. The same order provided that it was not to be construed to limit the right of the Office of Price Administration on its own behalf to intervene or participate in common carrier or utility proceedings, or to take such other steps as it may deem appropriate with respect to common carrier or other public

utility rates or charges for the purpose of effectuating the policies of the Emergency Price Control Act of 1942, as amended.

On October 16, 1942, at the first meeting of the Economic Stabilization Board the Director of Economic Stabilization, the Honorable James F. Byrnes stated that:

"I have delegated to the Office of Price Administration the power to intervene in cases involving proposed increases in the rates or charges of utilities. The Office of Price Administration is the agency best suited to represent the interests of the consumer in these matters."

At the same meeting, the Director stated:

"And to all the members of the Board, I will look for suggestions to keep down the cost of living. While ours is an economy based on personal incentive and the profit system, we must at this time give more attention to keeping prices down than keeping profits up."

Few men have ever had a graver or more difficult responsibility than that which is now imposed upon the Director of Economic Stabilization, the Price Administrator, and other officials who have the major task of preserving our economic system during this war and for the peace to come in the future. In order to carry out the responsibility, the whole-hearted cooperation of agencies such as this Commission must be extended to them. The Government has the right to expect the full measure of such cooperation. Nothing less is essential to prevent all further avoidable increases in the cost of living.

It must be clear from the language of the amend-
1470 ment to section 1 of the Price Control Act and the statements made on the floor of Congress relating to the Amendment that Congress did not intend that the right to intervention should be regarded as a mere gesture. We may properly assume that Congress by requiring util-

ities to consent to intervention took for granted that any State or Federal governmental agency would without equivocation or restriction grant full and complete intervention to the designated representatives of the President and the Director of Economic Stabilization.

And it is also our position that the right to intervene meant the right to intervene as a full party, even the right to appeal was indicated by the statement of Senator Brown discussing the proposed amendment, at page 7073 of the Congressional Record, October 2, 1942.

Mr. Keech: Mr. Booth, as to intervention, you state you have the full right of intervention. Is there anything in the record which describes the extent of the intervention? You cited one page. I thought maybe you had something to indicate the true intent of Congress as to the extent of intervention.

Mr. Booth: I have just indicated, Mr. Keech, that Senator Brown, in response to questions—Senator Brown was in charge with Senator Wagner, of the price-control
1471 bill in the Senate, and as a member of the Conference Committee Senator Brown indicated that the right to intervention would include the right to appeal. Congress—

Mr. Keech: Pardon me, Mr. Booth. Is that the only reference you have to the legislative history as to the extent of intervention?

Mr. Booth: Mr. Keech, I would be very happy to refer you to the Congressional Record of those dates. If you will examine the record you will see there was a great deal of discussion by Members of the House or the Senate on that bill and on that particular amendment. There was some discussion by Senator Norris and Brown and one or two other Senators in the Senate, and there was a very brief discussion by Congressman Steagall, and a proposal by Congressman Rankin, I believe, that the House reject the conference report with respect to intervention and go back to the original Norris amendment. Then, I believe

a day or two later, Congressman Wilcox made a statement in the record in connection with this amendment. As a result of our analysis of the words of the amendment and what was said in Congress we have concluded the position which I have just taken.

Mr. Keech: Thank you, sir.

1472 Mr. Booth: In this proceeding the Commission declared that the Commission's responsibility is twofold. On this point the Commission's majority declared:

"During the present proceeding, we indicated that our responsibilities are twofold. In the first place, it is the duty of this Commission to determine, in accordance with the provisions of the sliding scale arrangement as such arrangement is now constituted, whether the Washington Gas Light Company is entitled to an increase in rates for the year commencing September 1, 1942, and the amount of such warranted increase. This responsibility is so clear-cut that to ignore it would constitute an evasion of our duty and would be a serious reflection upon the ability of this Commission to cope with its problems in a fair and impartial manner.

"Secondly, having made this determination, it is our duty to give recognition to existing conditions and the bearing of such conditions upon the question before us. In addition to the present economic situation, which admittedly is of vital importance, we must also consider the credit position of the Company and its ability to finance its requirements for plant expansion and to render adequate service to the consumers in the District of Columbia."

1473 It is clear that while the Commission has said that its duty is to give recognition to "existing conditions" and the bearing of such conditions upon the "question before us" that in fact no real or actual consideration was given to "existing conditions." The only thing the Commission did was to determine whether it was appropriate to include as an operating expense the '42 income

taxes. On this point, the Commission concluded that it should allow the Company income taxes as an operating expense according to the rate which prevailed in 1941, and it left the door wide open to still higher rates next year if taxes went up.

But in fact the Commission did not reconsider the sliding-scale arrangement in the light of current conditions. It did not determine what was the fair rate of return in view of current economic conditions. It did not determine what was the proper rate base in the light of existing conditions, or existing legal principles. It did not determine what was the fair and reasonable operating depreciation expense. The Commission merely accepted its construction of the formula of the sliding-scale arrangement at every stage of the case except the income tax allowance. It flatly ignored the argument of O. P. A. that present condi-
1474 tions arising from the war requires the Gas Company as well as everybody else to share in the burdens of the war. The Commission also overlooked the fact that the Company, having enjoyed unusual prosperity under the sliding-scale arrangement, was now earning an adequate return and that no hardship would result if the Company continued to operate at existing rates.

But it is not my purpose at this time to point out the numerous errors contained in the Commission's order of October 13. That will be done by the filing of a petition for consideration on behalf of O. P. A.

The position we must insist upon is that if we as the agent designated by the Director of Economic Stabilization are to comply with the obligations imposed upon us in utility rate proceedings, there must be no strings or restrictions attached to our ability to make an adequate showing that the rates of the Washington Gas Light Company should be no higher than charged by the Company to its customers on September 15. We must be given the right to examine every issue which the courts have held enters into the making of fair and reasonable rate regardless of

the terms of sliding-scale arrangement or previous conclusions by the Commission that a rate increase is justified. If we are to comply with applicable judicial
1475 principles affecting the question of fair and reasonable rates, we must have the right to go into at least the following factors:

(1) What is a proper rate base? And on that point an inquiry should be made and promptly as to why the rate base should not be predicated upon the original cost of the Company property. Why should the rate payers be compelled to pay increase rates upon a rate base largely in excess of the original cost of the Company's property?

(2) What are fair operating expenses of the company? Here the question of depreciation expense is a serious problem as far as the public is concerned since accrued depreciation was not deducted from the rate base.

(3) What are other proper operating expenses? Here the minority opinion by Commissioner Hankin must be given fair and adequate consideration.

(4) What are proper income taxes to be allowed or should the Company's customers pay its war taxes?

(5) What is a fair rate of return for this Company in the light of current economic conditions?

It must be of course clear that a full and complete inquiry for the purpose of determining what are fair
1476 and reasonable rates, must be made in order that the Commission may comply with its duty under the law. That was shown conclusively by the brief filed with this Commission by the Office of Price Administration and, as far as we can determine, by a reading of the Commission's Order of October 13, I am sorry to say, there does not seem to be much attention paid to that contention.

Exhibit 8 submitted by Witness Joseph showed such a rate reduction is in order. Such a conclusion is also shown by Commissioner Hankin and a complete inquiry is also essential in order that this Office be able to fulfill the responsibility imposed upon it and upon behalf of the Di-

rector of Economic Stabilization. Our right as representative of the consuming public in this war to an adequate and a fair hearing is equal to the same rights of utility companies.

It is indeed doubtful whether fair and impartial consideration could be given to any further evidence submitted in this case that rates should go no higher than on September 15 if the Commission retains in effect its order of October 13 which unjustifiably increases the rates of this Company.

The Company has itself now consented to the intervention by the Price Administrator upon behalf of the
1477 Director of Economic Stabilization, and that is shown by a letter written by counsel for the Company addressed to the Public Utilities Commission, a copy of which was sent to us, except for the position which counsel has taken that they have already complied with the provisions of the amended Price Control Act by consenting to O. P. A.'s intervention or not objecting to it on August 18. I see no strings attached to the consent given to the intervention in that letter. On that point I merely wish to say that while counsel for the Company have stated that they consented to our intervention by taking the position in the earlier proceeding that our intervention did not broaden the issues in this proceeding, they took a position, as far as I can determine, which was accepted by this Commission and which effectively prevented intervention by the Office of Price Administration for the purpose of demonstrating that in view of the war and the Government's price stabilization program, that no increase in rates was in fact justified.

We think, therefore, particularly now in view of the position which counsel for the Company have taken in respect to what they believe its legal rights to be, that the Commission has no choice but to grant in full the original petition filed by the Price Administrator in behalf of the
1478 Director of Economic Stabilization, to permit us to

intervene in full without any restrictions, and rescind the original order of October 13 pending further proceedings in the case and to reopen the proceeding in order that full, complete, and fair consideration may be given to the real issue in the proceeding, namely, what are fair and reasonable rates to this Company in the light of the judicial principles applicable to the determination of fair and reasonable rates, the Government's program to try to keep the cost of living from rising any further, and the economic conditions which we are now in?

* * * * * * * * * *

1509 Commissioner Hankin: No. I would like to ask you a question, Mr. Booth, at this time.

1510 When you use the words, "evidence relating to inflationary effect of increase in rates"—are you listening, Mr. Booth?

Mr. Booth: Yes, I certainly am.

Commissioner Hankin: (continuing)—what do you mean by "evidence relating to inflationary effect"? Just how does one go about introducing evidence relating to an inflationary effect of a given increase?

Mr. Booth: Well, I wanted to refer that question to the Commission because the Commission used, the majority of the Commission stated that it was ordered that the record in this proceeding be reopened for the purpose of receiving additional evidence relating to the inflationary effects, if any.

Commissioner Hankin: You can't lay that at the door of the Commission. As I recall, your original petition used that language.

Mr. Booth: Do you have the original petition? I think I have made that provision clear.

We would have the right to present evidence on any question affecting the Company's right to an increase according to what the courts have determined constitutes fair and reasonable rates in the light of the Government's pro-

1511 gram to prevent further increases in the cost of living.

That is, we have the right to go into any question as to what affects the determination; whether or not the Company was in fact earning a fair and reasonable return; whether existing rates were or were not reasonable; whether or not there would be any hardship on the Company if it continued to operate at existing rates, and that would involve a complete analysis of the financial affairs and the earnings of the Company so that we could determine whether or not the hardship would be upon the customer or the hardship would be upon the Company.

Commissioner Hankin: Now, when you use the words, "present evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942, as amended by the Act of October 2, 1942",—

Mr. Booth: (interposing) Where are you reading from?

Commissioner Hankin: From your petition.

Mr. Booth: Which one?

Commissioner Hankin: The one filed on October 19,— "and the effect thereon of increases in rates and charges of common carriers or other public utilities," do you

1512 mean that if, for example, an increase is granted of $100,000, that the evidence would relate to the effect of the $100,000, or would that mean that one would have to go into the rate itself and its component parts to see whether there are any inflationary elements in it?

Mr. Booth: The point about it is this—

Commissioner Hankin: Do you mean the former or the latter?

Mr. Booth: (continuing) —to go into the question of whether or not a rate increase under those circumstances was justified according to the law of the land as related to the Government's program to keep down the cost of living, and that was one of the things I had intended to address to the Chairman of the Commission, because the Order of Oc-

tober 23 is far from clear, but in my argument this morning I construed as permitting only limited intervention in line with earlier rulings of the majority of the Commission with respect to this proceeding, but that is the reason we filed this petition here.

Commissioner Hankin: Now, Mr. Booth—

Mr. Booth: (interposing) Just a moment. I would like to ask the counsel for the Company—

1513 Commissioner Hankin: No, I would like to continue asking you a question.

Let's suppose that the Commission actually meant in its Order of October 23 that you are limited to the presentation of evidence showing the $200,000 increase had an inflationary effect—are you following me?

Mr. Booth: Yes. I just cannot understand what would be in the majority of the Commission's mind with respect to it. I would say that that would be an arbitrary and illegal restriction with respect to the Director——

Commissioner Hankin: (interposing) I am not concerned with the legal consequences of it, whether it is arbitrary or not arbitrary. What I am concerned with is this.

I would like to have a clear picture in my mind just what kind of evidence could one introduce which would show the inflationary effect of that part of the rate which may be attributed to the increase.

Mr. Booth: Well, the fact is, of course, that every increase in price or increase in rates in itself is in a sense inflationary.

The question that we are concerned with is preventing avoidable increases in prices and in utility rates in
1514 this proceeding.

In order that we should make any sort of a presentation in this proceeding I have presented this motion to the Commission to clear up the status and the rights of the Director of Economic Stabilization by Leon Henderson, according to the directive issued by the Director.

And I want to ask counsel for the Company whether or not—they said they had no strings attached to our intervention. Do I understand that you have agreed——

Commissioner Hankin: (interposing) Are you answering my question by asking a question of counsel for the Gas Company?

Mr. Booth: Yes, because I wanted to clear up this question, Mr. Hankin, unless you have a further question.

Mr. Hankin: Let me first finish with my questions.

Mr. Booth: All right; I beg your pardon. I asked you whether you had completed your questions.

Commissioner Hankin: I am not through yet. I think this matter is a very serious one and we don't want to make any mistakes.

You spoke about the inflationary effect of increases. What I would like to know is this:

1515 Let's assume that a rate is so unreasonable, so unreasonably low that it is confiscatory, that the Company cannot continue doing business. Would an increase in rates under those circumstances involve any inflationary effect?

Mr. Booth: Well, I would say under these circumstances of course if the service is one which is required for the public in order to conduct the efforts of the Government in the war, or indispensably necessary for civilian use, such as gas service, that if the existing rates were so unreasonably low as to prevent the Company from conducting its operation (which of course is not the situation here), that that would not be considered as an increase which can be avoided and which would be in conflict with the Government's program.

Commissioner Hankin: But would it be inflationary?

Mr. Booth: Would it be inflationary?

Commissioner Hankin: Yes.

Mr. Booth: In a broad economic sense some of the economists use the word that any increase is inflationary. It would not be considered in my judgment as a true inflationary increase under those circumstances.

Commissioner Hankin: It would not be inflationary for what reason?

1516 Mr. Booth: Because of the fact that the public ought to have that service and the service is necessary for the purpose of the war.

Commissioner Hankin: And because the increase would bring the price in line with what it should be. Is that correct?

Mr. Booth: In a sense that would be correct, yes, Mr. Commissioner.

Commissioner Hankin: Let's suppose, instead of the existing rate being unreasonably low, it is in fact unreasonably high; then would the inflationary effect be attributable to the increase in rate or to the rate itself?

Mr. Booth: It would arise out of a combination of both circumstances. The Commission's duty under those circumstances would be to fix fair and reasonable rates.

Commissioner Hankin: Insofar as the rates are not fair and reasonable but are unreasonably high, do they involve inflationary effects?

Mr. Booth: In Executive Order No. 9250 the President directed:

"The Price Administrator in fixing, reducing, or increasing prices, shall determine price ceilings in such a

1517 manner that profits are prevented which in his judgment are unreasonable or exorbitant.

Commissioner Hankin: You are concerned with those elements really which are not attributable to the increase. Is that correct?

Mr. Booth: The question as to whether or not the existing rates are unreasonably high, in the light of current conditions and legal principles as to what are fair and reasonable rates, is a factor which of course is the primary duty of the Commission. I am not saying, Mr. Commissioner, we are not concerned with it.

Commissioner Hankin: Are you concerned with it?

Mr. Booth: We are concerned with it, but it is not possible for us to go before every commission in the country where rates are excessive and tell them to reduce utility rates.

Commissioner Hankin: I am not talking about the extent of your capacities of personnel. I am asking this.

When you file a petition for intervention do you mean to go into the reasonableness of the rates themselves as well as the reasonableness of the increase in rates?

1518 Mr. Booth: I think our petition, Mr. Hankin, and various petitions that we have set up in this case set forth our interest in this case.

We have shown on the basis of an adjustment of only two factors, namely, income taxes and depreciation, that it is the Commission's duty to reduce these rates.

Commissioner Hankin: In other words the answer is yes. Is that right?

Mr. Booth: I think——

Commissioner Hankin: (interposing) My question did not call for a long speech. I simply wanted to have specific information.

Mr. Booth: We treat each case on its own merits, Mr. Commissioner, and I think we have shown the scope of our interest in this case in the light of the various pleadings and briefs and the evidence which has been so far presented to the Commission with the restrictions that the Commission has placed on our rights.

Are you through?

Commissioner Hankin: I am through.

* * * * * * * * * * *

1554 Chairman Flanagan: The Commission have considered the petition for amendment of Order No. 2404 of October 23, 1942, and for a stay of Order No. 2401 of October 13, 1942, filed by the Office of Price Administration on behalf of James F. Byrnes, Director of Economic Stabilization.

The ruling of General Kutz and of myself is that
1555 this petition is denied.

The Commission is now ready to receive evidence in accordance with Order No. 2404.

Commissioner Hankin: Don't you think I might state my dissent?

Chairman Flanagan: You might, very well; excuse me.

. . . . . .

1557 Chairman Flanagan: Are you ready to go forward under Order No. 2404, Mr. Booth?

Mr. Booth: If the Commission please, I think our position ought to be reasonably clear to the Commission by this time, namely, that there is a serious question as to whether the public interest could be furthered by presentation of further evidence to the Commission in this case, and I would like to have a reasonable opportunity to consult with my associates as to the future steps we should take in connection with this proceeding. I want to have the record show, of course, our exception to the ruling of the majority of the Commission, which, like the previous orders entered in this case, the order of October 13, the order of October 23, and the order refusing reopening and the order excluding Mr. Joseph's exhibit and many other orders which the majority of the Commission has from time to time entered in this case, all of which have deprived the Office of Price Administration of an apportunity to demonstrate that an increase here is in conflict with the program of the Government to prevent increases in the cost of living.

1558 I would suggest therefore that we recess until Wednesday morning, and with the approval of the Commission we will advise you definitely as to whether we can take any steps under the Commission's order of October 23 in the absence of the other relief we have prayed for, namely, that the Commission rescind the order of October 13 and grant the Director of Economic Stabilization full and complete intervention as a party in this proceeding, and for that reason I would like to have a reasonable oppor-

tunity to consult with my associates on our final position with respect to it.

Mr. Keech: Might I ask Mr. Booth one question? Do I understand now, Mr. Booth, that you have no evidence to present which would conform to Order No. 2404?

Mr. Booth: Well, Mr. Keech, I know you have been here for the first time in this hearing——

Chairman Flanagan: That has nothing to do with it, Mr. Booth. Mr. Keech has been fully informed of the progress of these proceedings.

Mr. Booth: I would like, Mr. Chairman, to respond to the question of Mr. Keech.

Chairman Flanagan: Please do.

Mr. Booth: And I can do it without any assist-
1559 ance——

Mr. Stevens: Now——

Mr. Booth: The point about that is, Mr. Keech, I have indicated our position in the matter, namely, that the Commission arbitrarily and illegally has denied the Office of the Director of Economic Stabilization——

Mr. Keech: Mr. Chairman, I did not ask for an oration; I ask for an answer to the question.

Chairman Flanagan: Please answer, Mr. Booth. We have had nothing but long speeches every time you are called on.

Mr. Booth: Just as Mr. Keech indicated, the Commission was very tolerant——

Chairman Flanagan: Are you going to answer Mr. Keech's question or not?

Mr. Booth: Certainly I am.

Chairman Flanagan: Please do so.

Mr. Booth: I think I have answered that question, namely, that unless the Commission grants the Director of Economic Stabilization the relief which we have sought for him and which we think we are entitled to as a matter of law and as a matter of equity, the question of our presentation of evidence under an order which in itself is mean-

ingless and which no adequate explanation has been
1560 made of by either Mr. Keech, Mr. Harrison, or Mr. Flanagan or General Kutz as to what the Commission meant when it used those words—under those circumstances we want a reasonable time to determine what further steps, if any, we shall take with respect to this proceeding.

Chairman Flanagan: Mr. Keech, did you get an answer that would satisfy you?

Mr. Keech: I do not consider that an answer to my question.

Chairman Flanagan: Is that the most adequate answer you can make to Mr. Keech's question, Mr. Booth?

Mr. Booth: I think Mr. Keech should understand our position with respect to why we cannot proceed with the presentation of testimony at this time in this case.

Mr. Stevens: Then it seems to me, Mr. Chairman, it is proper at this time to move that the record in this case be closed, and I so move.

Mr. Booth: I have stated to the Commission that we wish a reasonable opportunity to determine our future course with respect to this proceeding.

Mr. Stevens: This is the same old rigmarole we have been going through for two months.

1561 Mr. Booth: I don't like the use of this term "rigmarole."

Mr. Stevens: Well, strike the "rigmarole."

Mr. Booth: I know you have expressed impatience from the very first day you have been here because you did not get the increase on August 18.

Chairman Flanagan: Let us not have these exchanges between counsel. I would like to have Mr. Keech express himself on the request for delay until Wednesday.

Mr. Booth: There is no request for a delay.

Chairman Flanagan: What is it, then; will you repeat it?

Mr. Booth: I want a reasonable time to consult with my associates as to future steps to be taken in this proceeding.

Chairman Flanagan: What is your idea of a reasonable time; what do you have in mind?

Mr. Booth: Wednesday morning; I have already indicated that.

Chairman Flanagan: To reconvene the proceedings here Wednesday morning?

Mr. Booth: Or we can advise the Commission between now and Wednesday morning if we wish to reconvene and if we do not wish to come back at that time, we can advise you in the meantime.

. . . . . .

1565 Chairman Flanagan: May I ask whether you have any testimony to present along the lines laid down by Order 2404, Mr. Booth?

Mr. Booth: Apparently Mr. Keech does not understand there is a very serious doubt in my mind that in the absence of revocation by the Commission of its Order of October 13 granting the Company an increase in rates, that we could get an impartial hearing by the presentation of any additional evidence—

Chairman Flanagan: Mr. Booth, you have made remarks on this record that are objectionable from beginning to end. Let that be the last, please.

Mr. Harrison: If the Commission please, I call attention to Rule 4.4 of the Rules of Procedure before this Commission, which reads, in the second paragraph, as follows:

"Conduct amounting to contempt in any hearing before the Commission or any member of the Commission shall be grounds for exclusion from the hearing and for summary suspension for the hearing and all other proceedings."

I think in view of the contemptuous conduct of this counsel it is high time to invoke that rule.

1566 Mr. Booth: Perhaps the Commission misunderstood—

Chairman Flanagan: We have not misunderstood; it has occurred all the way through the proceeding; we have understood only too well and we have been very lenient.

Mr. Booth: The point is, under the assumption that the Commission is really interested in some real help on this case, considering its importance, I have made every effort to get men whom I consider the most competent, experienced, and impartial in the field to review this record and present evidence to the Commission on it. Among those men were Dr. James C. Bonbright, Professor of Economics in the School of Business of New York University, with whom I was in contact several times during the last ten days since the Commission entered its order. Dr. Bonbright is noted throughout the country as an outstanding scholar and expert, both as an economist and as an expert in the field of public utilities. He advised me he had, in addition to his work at Columbia University, as professor in the School of Business, and as chairman of the New York Power Authority, he has been also engaged by the Treasury Department to testify in an important proceeding in court,

1567 and only on Saturday morning did he finally decide, in view of his obligations and his health, he would be unable to undertake the work in this preceeding.

We have also obtained the assistance of Mr. Mark Wolfe, who has been an expert in the field of public utility and rate problems for a period of 25 years, he has been employed by at least nine different State commissions or States and many more municipalities in important rate cases. I have wanted him to review the record in this case in the light of the Government's program to prevent increases in the cost of living and I have an affidavit here from Mr. Wolfe which states it would take a minimum of three weeks for him to become familiar with this proceeding. But other than that—

Mr. Harrison: Was not Mr. Wolfe in the hearing room today?

Mr. Booth: Mr. Harrison—

Mr. Harrison: I understand he has been in the hearing room today.

Mr. Booth: Well, what about that? I am not interested in your views on this proceeding. I will present now, the affidavit of Mr. Wolfe.

Mr. Keech: Mr. Chairman, I object to the introduction of any affidavit when the witness was present throughout the hearing today.

1568 Mr. Booth: That is all right. I want to present the affidavit. Will the Commission receive it?

Mr. Keech: Mr. Booth knows it is not admissible.

Chairman Flanagan: The objection is sustained.

Mr. Booth: We have felt that the basic issue here is the question of the revocation of the Commission's order, and I think I have made our position clear and the strain and difficulty in which we have tried to enable the Commission in reaching a proper decision here. That was the reason I hoped, without further controversy or discussion, that the Commission would understand that it is a very serious and grave matter for us and it was not unreasonable under those circumstances for us to seek a very short postponement, without accusations from both counsel for the Commission and counsel for the Company of the character which they have made.

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1575 The Chairman: This hearing will reconvene at 10:00 o'clock Wednesday morning.

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Chairman Flanagan: Are you now ready to proceed, Mr. Booth?

1605 Mr. Booth: Yes, I am.

If the Commissioners please, at the close of the hearing on Monday I indicated that I wanted until this morning to consult with my associates in order to determine our course of action finally with respect to the Commission's order of October 23. Before I do so, however, I would like to call Mr. Owers and ask him one or two questions, and then I want to read some figures into the record.

Mr. Owers.

Robert C. Owers

was recalled as a witness and, having been previously duly sworn, testified further as follows:

Further Cross-Examination

Mr. Booth: You are the same Mr. Owers who has testified previously in this proceeding?

Mr. Owers: Yes, Mr. Booth.

Mr. Booth: And I believe you are vice-president in charge of the finances of the Company?

Mr. Owers: That is right, Mr. Booth.

Mr. Booth: I think in the earlier stages of this proceeding I had questioned you concerning this exhibit
1606 which is headed, "Washington Gas Light Company, Prince Georges Gas Corporation, Comparison of Company and Public Utilities Commission Accountants' Computation of Net Amount Available for Return"; is that correct?

Mr. Owers: I think I recall the exhibit, but I would like to see it.

Mr. Booth: This was the Company's exhibit in this case.

Mr. Owers: Yes, I am familiar with this document.

Mr. Stevens: Can you identify that by exhibit number, Mr. Booth?

Mr. Booth: Off the record.

(Discussion off the record.)

Mr. Booth: It is Exhibit No. 2.

Mr. Keech: I wonder if I might ask Mr. Booth a question.

Mr. Booth: Yes.

Mr. Keech: Is it your purpose to proceed in conformity with Order No. 2404 and present to the Commission evidence which would indicate the inflationary effect of the order which provided a rate increase to the Washington Gas Light Company?

Mr. Booth: Mr. Keech, I have asked the witness—

Mr. Keech: I ask for an answer, Mr. Chairman.

1607 Chairman Flanagan: I ask you the same question, Mr. Booth.

Mr. Booth: Do I understand that the Commission objects to my questioning Mr. Owers further?

Chairman Flanagan: Let us have an answer to Mr. Keech's question first.

Mr. Booth: I will state now what I propose to ask Mr. Owers—

Mr. Keech: Mr. Chairman, that is not responsive.

Mr. Booth: I will state now what I propose to ask Mr. Owers and—

Mr. Keech: If the Chairman please, I ask for an answer to the question. It is perfectly clear and simple and I think I am entitled to an answer.

Chairman Flanagan: Please answer the question, Mr. Booth.

Mr. Booth: The facts which I propose to develop from Mr. Owers will be very brief and they should be helpful to a determination of the rates of this Company under the law—

Chairman Flanagan: That is not responsive to Mr. Keech's question. Please make a responsive answer to the question.

Mr. Booth: Yes. The facts, I believe, will help demonstrate the inflationary effect of the Commission's
1608 order of October 13 and we would rely upon them as evidence to demonstrate the inflationary effect.

Mr. Owers, I direct your attention to the caption, "Federal Income Taxes," which is shown here in the amount "Company, $526,440"; are you familiar with that figure?

Mr. Owers: Yes.

Mr. Booth: I believe you stated earlier that that was predicated upon the Internal Revenue Act under consideration by Congress prior to the adoption of the final bill; is that correct?

Mr. Owers: This is the accrual for taxes for the test year at the rates in effect in the year 1941 and at 40 percent for the part of the test year which lies within the calendar year 1942.

Mr. Booth: Is it true, Mr. Owers, that the Revenue Act as finally adopted by Congress would result in a lower tax liability of the Company than the amount shown?

Mr. Owers: The general rate was enacted at 40 percent. There would be a credit to the Company under the Act as finally enacted with respect to the surtax on that amount of earnings which is devoted to the payment of pre-
1609 ferred dividends. So that the calculation would be somewhat different and somewhat lower if the Revenue Act of 1942 as finally enacted was used.

Mr. Booth: Will you state approximately for the record the amount of the difference in the Company's income tax liability under the method used in making that computation and under the provisions of the bill as finally enacted by Congress?

Mr. Owers: The amounts herein would be reduced by the amount of surtax, which I believe is 16 percent on the amount of preferred dividends paid. Of course, it only relates to the year 1942 and to the first six months of the year 1942.

Mr. Booth: What would the amount be, approximately?

Mr. Owers: During the first six months of 1942, to the best of my recollection, the preferred dividends paid were $135,000, and 16 percent of that would be about $37,600.

Mr. Booth: On the full year basis would the Company's liability for Federal income taxes then be about twice that amount?

Mr. Owers: On the full year basis for 1942, yes, but not on the test year basis. But looking to the future, that would be true. On the test year the amount would be about $27,000.

1610 Chairman Flanagan: Which figure is it, Mr. Owers, $37,000 or $27,000. I think you said $37,000 the first time.

Mr. Owers: $37,600.

Mr. Booth: That will be all, Mr. Owers.

Mr. Owers: I think I have made an error in this computation and I would like to go through it again.

The preferred dividends paid in the six months ended June 30, 1942, were approximately $135,000. It is only those preferred dividend payments which are the basis for deduction in the income tax returns under the new law, for surtax purposes only. The surtax rate in the new law, I believe, is 16 percent. Sixteen percent of $135,000 is $21,600, and not $37,600, as I erroneously stated.

Mr. Booth: On an annual basis that would mean a saving to the Company of approximately twice that amount?

Mr. Owers: Yes.

Mr. Booth: That will be all.

Chairman Flanagan: Any questions of Mr. Owers?

Mr. Stevens: Yes.

Commissioner Hankin: Before you ask Mr. Owers, Mr. Stevens, I would like to ask Mr. Booth what is the relevancy of the evidence that you have brought out to the
1611 question of whether the $200,000 increase, if it stands, will result in a lowering of the value of the dollar?

Mr. Booth: I think perhaps my statement was misunderstood. I said we propose to rely—I want to get in the latest accurate information that might be available relating to the Company's condition, and of course we have made our position clear the increase here is clearly avoidable and is an inflationary increase contrary to the Government's program. Before the hearing is closed I felt it my duty to correct the record on that particular point, to show that the Company was in a somewhat even slightly more favorable position, and it aided us in demonstrating, along with the other factors in the case, that the increase was of an inflationary character.

Chairman Flanagan: Mr. Stevens, do you have some questions?

Re-direct Examination

Mr. Stevens: Mr. Owers, the Company's accrual for Federal income taxes for the test year was approximately $526,440; is that correct, in accordance with Exhibit No. 2?

Mr. Owers: Yes, that is correct.

Mr. Stevens: And this credit with respect to preferred stock dividends would reduce that figure approximately $21,000?

1612 Mr. Owers: It would reduce that figure even less than that, because the $526,000 is a figure derived after allocations to service of gas outside the District, and in the calculation which I made in respect to the preferred stock dividends I was taking the total dividends and have not made any allocation of that.

Mr. Stevens: Would you care to make a rough estimate as to what the actual deduction in the accrual would be?

Mr. Owers: I believe about 15 percent of the amount which I calculated would be related to service outside the District. That would reduce the amount by which this accrual on Exhibit 2 is shown by about $18,500, or some such figure.

Mr. Stevens: So that the accrual of the $526,000 would be reduced to about $508,000?

Mr. Owers: Yes, about $508,000.

Mr. Booth: Mr.—

Mr. Stevens: Just a minute.

Now, Mr. Owers, are you familiar with the amount of taxes actually allowed as a deduction by the Public Utilities Commission in its order of October 13, 1942?

Mr. Owers: Yes, I note they allowed only 31 per-
1613 cent for taxes.

Mr. Stevens: What would mean an accrual of approximately $378,000, Mr. Owers?

Mr. Owers: Yes.

Mr. Stevens: And that would be still approximately $130,000 less than the accrual of the Company, adjusted, as you have just modified it by the deduction of approximately $18,000?

Mr. Owers: Yes, that is so.

Mr. Stevens: That is all.

Recross-examination

Mr. Booth: The computation of $526,000 was on an annual basis; is that correct?

Mr. Owers: It is for the 12 months ending June 30, 1942; yes, sir.

Mr. Booth: That will be all.

(Witness excused.)

Mr. Booth: Mr. McElfresh.

V. A. McElfresh

was recalled as a witness and, having been previously duly sworn, testified further as follows:

1614 Further Cross-examination

Mr. Booth: Mr. McElfresh, we have in the last few days asked your office whether the Washington Gas Light Company, for September, 1942—

Chairman Flanagan: Mr. Booth, are you calling Mr. McElfresh as a witness for cross-examination?

Mr. Booth: I will call him, not for cross-examination, but to bring some facts to the attention of the Commission.

Chairman Flanagan: This is also pursuant to our order?

Mr. Booth: I want to say this: We think the record is clear now that the Commission's order is inflationary in character. I do not construe the Commission's order as prohibiting the Commission from securing into the record now the latest financial data relating to the Company. If it does, then I will withdraw Mr. McElfresh because that is all I want to bring into the record now, the latest available financial information on file with the Commission, and put it into the record.

Chairman Flanagan: You will rely on it to the same extent that you rely on the answers of Mr. Owers?

Mr. Booth: I am relying on the over-all position of the Company to demonstrate an increase is not necessary. I still adhere to the position we have taken that the

1615 Commission's order of October 23 is impracticable, and the proof—what I am trying to do is to present some facts to the Commission here. If the Commission does not feel they are relevant, I am perfectly willing to have the Commission exclude them.

Mr. Keech: May I ask Mr. Booth a question?

Mr. Booth: Yes.

Mr. Keech: Do the facts which you propose to present, in your opinion, show the inflationary effect of Order No. 2401?

Mr. Booth: I don't know just what Mr. Keech—I don't know why Mr. Keech should interrupt me at this time. I am trying to bring to the attention of the Commission—

Chairman Flanagan: Mr. Booth, the case was reopened for a specific purpose. Are your inquiries directed to answering the order issued?

Mr. Booth: Do I understand that unless I am able to answer Mr. Keech's question, the Commission will not permit me to put into the record here some facts from the Company's last annual report as filed with the Commission?

Chairman Flanagan: It depends on whether you state—

Mr. Booth: I don't believe I am under any obligation a answer Mr. Keech's question.

1617 Chairman Flanagan: Please let me finish. I am asking you the same question Mr. Keech asked.

Mr. Booth: What is the question?

Mr. Keech: In the interest of time, I think I can state the question.

Mr. Booth: If the Commission please, I will not attempt to put in any more evidence.

Chairman Flanagan: You are excused, Mr. McElfresh.

(Witness excused.)

Mr. Booth: If the Commission please, upon a consideration of the record in this case, we think the record is clear, even under the restrictive conditions under which the Commission has so far permitted participation by the Office of

Price Administration in this rate proceeding that the increase in rates authorized by the Commission under its order of October 13, is contrary to the national policy of preventing further avoidable increases in the cost of living. We believe also that Congress by the enactment on October 2, 1942, of Section 1 of the amended Price Control Act intended that utility rates should not be increased over those in effect on September 15, 1942, without a complete reconsideration of existing utility rates in the light of the new Price Control Act, and the policies of the
1617 Office of the Director of Economic Stabilization and the O.P.A.

If this is to be done, complete and unequivocal intervention must, upon request such as has been in this proceeding, be accorded this Office on behalf of the Director of Economic Stabilization. The Commission's order of October 13 should also be rescinded and the case be reopened so that we can be helpful to the Commission in clearing up the conflict between this order and the national program.

This Office is still extremely anxious to aid the Commission in arriving at a proper decision in this case. If the Commission desires our further assistance it can only be given under the conditions laid down by Congress and not this Commission, its counsel, or the Company attorneys, prescribe our obligation and course of action we think we must follow in this case. Until the Commission conforms to the spirit and letter of the Act of Congress the public interest would not be served by the presentation of further evidence to the Commission.

This decision rests not only upon the failure of the Commission to permit unrestricted intervention by the Director of Economic Stabilization but also upon the Commis-
1618 sion's earlier refusal to grant earlier motions of the Office of Price Adminsistration which would have permitted a true reconsideration of the sliding-scale arrangement in the light of the Government's inflation program, the limitations placed by the Commission from time

to time on the issue in the case, the initial exclusion of testimony presented by the Office of Price Administration witness, Samuel Joseph, and the character of the order entered on October 13. By these acts the Commission has compelled us to take the position that no further testimony can be presented to the Commission.

Under the law, however, the door still remains open for the Commission to correct its decision to conform to the law. That applies both to the order of October 13 and the order of October 23. That can be done now or, upon review of a petition for reconsideration which this office proposes to file within the time permitted by the Public Utilities Act governing this Commission.

Chairman Flanagan: I understand you have no further testimony to present pursuant to our Order No. 2404; is that correct?

Mr. Booth: I think our position on that is clear. I will rest upon this statement.

1619

Chairman Flanagan: Any comment, Mr. Keech?

Mr. Keech: I have no comment to make; I have nothing further.

Chairman Flanagan: The proceedings in this case are closed.

(Thereupon, at 10:50 a.m., the proceedings were closed.)

1620 *Exhibit No. 1*

Schedule 1.

WASHINGTON GAS LIGHT COMPANY
PRINCE GEORGE'S GAS CORPORATION

Determination as of June 30, 1942 of Net Amount Available for Return and Amount Available for Increase of Rates.

Adjusted Operating Revenues (Schedule 3)		$ 8,918,656.27
Adjusted Operating Expenses (Schedule 4)		7,417,941.76
Net Amount Available for Return prior to Adjustment		$ 1,500,714.51
Adjustment for increase in certain Operating Costs as provided in Section 6, Order 1458:		
Production Labor	$20,043.06	
Production Fuels	41,572.89	
Taxes	4,929.39	$ (66,545.34)
Adjusted Amount Available for Return		$ 1,434,169.17
Rate Base as of June 30, 1942 (Schedule 2)		$28,088,331.57
Rate of Return Earned		5.1059%
Return at Basic Rate of 6½%		$ 1,825,741.55
Deficiency in Return under 6½%		$ 391,572.38
Amount Available for Rate Increase:		
5/6 of the Deficiency in Return		$ 326,310.31

Exhibit No.
Schedule 6.

SHINGTON GAS LIGHT COMPANY
PRINCE GEORGE'S GAS CORPORATION

COMPARATIVE STATEMENT OF UNADJUSTED NET OPERATING INCOME FOR THE TEST YEARS ENDED JUNE 30, 1942 AND JUNE 30, 1941.

	Test Year Ended June 30, 1942		Test Year Ended June 30, 1941		Amount of Increase or Decrease		Percent of Increase or Decrease	
	MCF	Amount	MCF	Amount	MCF	Amount	MCF	Amount
OPERATING REVENUE								
Gas Service Revenues								
Domestic	6,502,973	$5,048,376	6,166,206	$4,788,976.70	336,767	$259,400.11	5.46	5.42
Building Heating	3,499,480	2,099,159	3,385,157	2,031,208.91	114,323	67,950.58	3.38	3.35
Commercial and Industrial	2,270,391	1,398,743	2,023,436	1,246,929.86	246,955	151,813.26	12.20	12.17
Street Lighting	244	286	244	286.28	----	.05	0.00	0.00
U. S. and D. C. Governments	463,334	237,438	282,000	152,196.97	181,334	85,241.26	64.30	56.01
Sub-Total	12,736,422	$ 8,784,003	11,857,043	$8,219,598.72	879,379	$564,405.26	7.42	6.87
Washington Gas Light Company -- Montgomery County, Maryland	1,777,599	764,367	1,488,008	669,098.02	289,591	95,269.76	19.46	14.24
Roslyn Gas Company	1,067,933	426,444	645,141	289,041.29	422,792	137,403.14	65.53	47.54
Alexandria Gas Company	92,587	32,405	233,522	102,622.30	(140,935)(1)	(70,216.85)(1)	(60.35)(1)	(68.42)(1)
Washington Suburban Gas Company	115,794	43,898	85,739	32,634.45	30,055	11,264.24	35.05	34.52
Total Gas Service Revenues	15,790,335	$10,051,120	14,309,453	$9,312,994.78	1,480,882	$738,125.55	10.35	7.93
Other Revenues	-----	134,310	----	128,987.11	----	5,323.05	---	4.13
Total Operating Revenue	15,790,335	$10,185,430	14,309,453	$9,441,981.89	1,480,882	$743,448.60	10.35	7.87
OPERATING EXPENSES								
Production								
Water Gas	11,643,388	$ 2,661,291	10,695,406	$2,177,600.51	947,982	$483,690.69	8.86	22.21
Enriching Gas (Natural)	4,560,260	1,675,753	4,102,976	1,520,402.24	457,284	155,350.90	11.15	10.22
Mixed Gas	16,203,648	$ 4,337,044	14,798,382	$3,698,002.75	1,405,266	$639,041.59	9.50	17.28
Natural Gas for Resale	113,879	37,627	85,739	28,635.06	28,140	8,992.56	32.82	31.40
Total Production	16,317,527	$ 4,374,671	14,884,121	$3,726,637.81	1,433,406	$648,034.15	9.63	17.39
Distribution		1,055,969		951,022.82		104,946.66		11.03
Customers' Accounting and Collecting		543,136		512,281.59		30,854.95		
Sales Promotion Expenses		243,420		315,924.10		(72,503.60)(1)		(22.95)(1)
Administrative and General Expenses		691,967		625,536.11		66,431.04		10.62
Sub-Total		$ 6,909,165		$6,131,402.43		$777,763.20		12.68
Taxes		$ 1,234,526		$1,110,669.63		$123,857.05		11.15
Retirement Expense								
Sliding-Scale Basis		$ 379,506		$ 366,064.82		$ 13,441.83		3.67
General		109,099		84,829.97		24,269.16		28.61
Interest		74,226		64,757.47		9,469.16		14.62
Sub-Total		$ 562,832		$ 515,652.26		$ 47,180.15		9.15
Total Operating Expenses		$ 8,706,524		$7,757,724.32		$948,800.40		12.23
Net Operating Income, Unadjusted		$ 1,478,905		$1,684,257.57		($205,351.80)(1)		(12.19)(1)

(1) Parentheses indicate decrease or deduction.

1629 *Exhibit No. 2.*

WASHINGTON GAS LIGHT COMPANY
PRINCE GEORGE'S GAS CORPORATION

Comparison of Company and Public Utilities Commission Accountants' Computation of Net Amount Available for Return in Accordance with P.U.C. Order #1458

Test Year Ended June 30, 1942

	Company	P.U.C. Accountants'	Excess of Company over P.U.C.	
Rate Base				
Property	$26,915,667	$26,915,667	$	
Materials and Supplies	575,611	575,611	....	
Cash Working Capital	600,203	597,054	3,149	(A)
Total	$28,091,481	$28,088,332	$ 3,149	
Adjusted Operating Revenues	$ 8,918,656	$ 8,918,656	....	
Operating Expenses:				
Operation and Maintenance	$ 6,002,034	$ 5,970,538	$ 31,496	(B)
Depreciation	348,070	348,070	....	
General Taxes	603,996	604,916	(920)	(C)
Federal Income Taxes	526,440	494,417	32,023	(D)
	$ 7,480,540	$ 7,417,941	$ 62,599	
Adjustments under Section 6 of Order #1458				
Production Labor	20,043	20,043	....	
Production Fuel	44,868	41,573	3,295	(E)
Taxes	7,086	4,929	2,157	(F)
Total Adjusted Operating Expenses	$ 7,552,537	$ 7,484,486	$ 68,051	
Adjusted Net Operating Revenues	$ 1,366,119	$ 1,434,170	$(68,051)	
6.50% of Rate Base	1,825,946	1,825,742	204	(G)
Deficit in Basic Return	$ 459,827	$ 391,572	$ 68,255	
Amount Available for Rate Increase—5/6 of Deficit in Basic Return	$ 383,189	$ 326,310	$ 56,879	

	Stipulation Item No.	Amount
(A) Difference is 10% of net difference in adjusted operating expenses, before depreciation and taxes (See Item B)		$ 3,149

	Stipulation Item No.	Amount
(B) Items charged to Operating Expense—excluded by P.U.C. Accountants—		
Payment to Greater National Capital Committee	1	$ 89
Sales promotion expenses—considered applicable to Merchandise and Jobbing operations	2	26,825
Expenses in connection with abandoned financing	3	3,257
Payment to United Service Organization	4	1,250
Charges under Miscellaneous Trust Fund Order #115 relative to $5.00 Cumulative Preferred Stock		75
		$31,496

( ) Indicates red figures.

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	Stipulation Item No.	Amount
(C) D. C. income tax allocated to Merchandise and Jobbing operations by Company		$ (923)
Minor difference—not reconciled		3
		$ (920)
(D) Difference in Federal income taxes due to treatment by Company and P.U.C. Accountants	5	$32,023
(E) Difference in fuel adjustment due to use by P.U.C. Accountants of May 31, 1942 average inventory unit prices, whereas Company used June 30, 1942 average inventory unit prices in calculating adjustment under Section 6 of Order #1458	6	$ 3,295
(F) Difference in adjustment of taxes under Section 6 of Order #1458 due to treatment of Federal income taxes, as referred to in Item D, above		$ 2,157
(G) Difference represents 6½% of $3,149 difference in working capital as referred to in Item A.		$ 204

( ) Indicates red figures.

EX. 9.

1656 WASHINGTON GAS LIGHT COMPANY

Proposed Increase of Domestic Bills

Effect of Proposed Rate Increase on Monthly Bills of Domestic Customers without Space Heating.

Present Rate (Net)	Proposed Rate (Net)
1st 800 cf. or less $0.75	1st 700 cf. or less $0.75
Next 1,700 cf. @ 8.0¢/C	Next 2,300 cf. @ 8.0¢/C
Next 3,500 cf. @ 7.0¢/C	Next 4,000 cf. @ 7.0¢/C
Over 6,000 cf. @ 6.1¢/C	Over 7,000 cf. @ 6.2¢/C.
Min. Bill $0.75	Min. Bill $0.75

Cu. Ft. Per Mo.	Monthly Bill Present Rate A	Monthly Bill Proposed Rate A	Increase
700	0.75	0.75	—
800	0.75	0.83	8 ¢
1,000	0.91	0.99	8 ¢
1,200	1.07	1.15	8 ¢
1,500	1.31	1.39	8 ¢
2,000	1.71	1.79	8 ¢
2,500	2.11	2.19	8 ¢
3,000	2.46	2.59	13 ¢
3,500	2.81	2.94	13 ¢
3,700 Avg.	2.95	3.08	13 ¢
4,000	3.16	3.29	13 ¢
5,000	3.86	3.99	13 ¢
7,500	5.48	5.70	22 ¢
10,000	7.00	7.25	25 ¢
15,000	10.05	10.35	30 ¢
20,000	13.10	13.45	35 ¢
30,000	19.20	19.65	45 ¢
50,000	31.40	32.05	65 ¢
100,000	61.90	63.05	$1.15

Specimen Calculation

Bill for Avg. Use of 3,700 cf.

Present		Proposed	
800 cf.	$0.75	700 cf.	$0.75
1,700 cf. @ 8.0¢/C	1.36	2,300 cf. @ 8.0¢/C	1.84
1,200 cf. @ 7.0¢/C	.84	700 cf. @ 7.0¢/C	.49
3,700 cf.	$2.95	3,700 cf.	$3.08

August, 1942

3 United States District Court
for the District of Columbia

No. 17806

LEON HENDERSON, Price Administrator of the Office of Price Administration, *Appellant*,

v.

JAMES H. FLANAGAN, GREGORY HANKIN, AND C. W. KUTZ Being the Public Utilities Commission of the District of Columbia, *Appellees*.

Petition of Appeal

Now comes Leon Henderson, Price Administrator of the Office of Price Administration, this 18th day of November, 1942, and files this appeal and states that he is a party affected by the decision and order of the Commission, dated October 13, 1942, (Exhibit A hereto) proposed to be made effective as of September 1, 1942, determining, fixing, and ordering schedules of increased rates and charges for the sale of gas in the City of Washington, District of Columbia, by the Washington Gas Light Company; that prior thereto on August 18, 1942, appellant filed an intervening petition (Exhibit B hereto) before said Commission in this proceeding and on the same day the Commission granted appellant leave to intervene and made appellant a party to said proceeding; that on September 28, 1942, a date prior to said decision and order, appellant filed a petition (Exhibit C hereto) for reopening of the proceeding for the purpose of receiving further evidence, which petition was denied by the Commission by its ruling of September 30, 1942; that subsequent to said decision and order appellant on November 12, 1942, filed a petition for reconsideration (Exhibit D hereto) with the Commission pursuant to paragraph 64 of the Act of March 4, 1913, as amended (D. C. Code, Title 43, Sec. 704; 37 Stat. 988, Chap. 150, Sec. 8; 49 Stat. 882, Chap. 742, Sec. 1), which petition was denied by the Commission by order dated November 16, 1942 (Exhibit E hereto).

Pursuant to paragraph 65 of said Act of March 4, 1913, as amended (D. C. Code, Title 43, Sec. 705; 37 Stat. 989, Chap. 150, Sec. 8; 49 Stat. 882, Chap. 742, Sec. 2), appellant assigns the following reasons for this appeal:

The Commission's decision and order of October 13, 1942, proposed to be made effective as of September 1, 1942, determining, fixing, and ordering schedules of increased rates and charges for the sale of gas by the Washington Gas Light Company is illegal because:

1. Said decision and order is based upon findings of fact which are unreasonable, arbitrary and capricious in that they are not premised upon substantial evidence, and are not and cannot be supported by proper and necessary subsidiary findings, and in that they were made without evidence of and without consideration of present economic conditions.

2. Said decision and order is unreasonable, arbitrary and capricious in that it was entered without consideration of the effect of present economic conditions upon the terms and provisions of the sliding scale arrangement approved by the Commission in its order No. 1458 dated December 13, 1935.

3. Said decision and order is based upon findings of fact which are unreasonable, arbitrary and capricious in that they were made in complete and utter disregard of established and accepted accounting and legal principles, and are contrary thereto.

4. Said decision and order was adopted after a hearing wherein the issues were unnecessarily and unlawfully limited and the scope of the proceeding and the participation of appellant was otherwise restricted, and appellant was denied and refused a full and fair opportunity to be heard.

5. Said decision and order is based upon an erroneous interpretation and construction of the Commission's duty and responsibility to the gas consuming public, and is violative of the Commission's statutory duty to determine, fix, and order just and reasonable rates and charges and no more, and to prohibit unjust and unreasonable and otherwise unlawful rates and charges.

6. Said decision and order was entered without giving the Director of Economic Stabilization the opportunity of timely intervention as contemplated by the Act of October 2, 1942 (Pub. Law 729; 77th Cong., 2d Sess.), amending the Emergency Price Control Act of 1942, and with full knowledge at the time of entry of such decision and order that the Washington Gas Light Company had not complied with the requirements of said Act.

7. Said decision and order determines, fixes and orders schedules of increased rates and charges proposed to be made effective as of September 1, 1942, a date prior to the entry of said decision and order, although the Commission has no statutory authority to make any schedule of rates and charges effective as of a date prior to the approval thereof.

8. Said decision and order is arbitrary, unreasonable and capricious as it is contrary to the program of the Federal government to prevent inflation and to stabilize the cost of living by preventing all future avoidable increases thereof, in that it was entered without a clear and convincing showing that the existing rates and charges were not sufficiently compensatory under present economic conditions or that the Washington Gas Light Company would be subjected to undue hardship if the existing rates and charges were continued in effect.

9. Said decision and order is arbitrary, capricious and unreasonable, and is contrary to the program of the Federal government to prevent inflation and to stabilize the cost of living by preventing all future avoidable increases for it permits an increase in rates notwithstanding the fact that the record before the Commission demonstrates that the existing rates and charges of the Washington Gas Light Company produce at least an adequate return to the Company.

The appellant is aggrieved by said decision and order of October 13, 1942, issued by the Public Utilities Commission of the District of Columbia and files this petition for the purpose of obtaining a review of such decision and order by this honorable Court pursuant to paragraph 65 of the Act

of March 4, 1913, as amended (D. C. Code, Title 43, Sec. 705; 37 Stat. 989, Chap. 150, Sec. 8; 49 Stat. 882, Chap. 742, Sec. 2). The purpose of this proceeding is to prevent the Washington Gas Light Company from effecting the schedules of increased rates and charges which have been determined, fixed, and ordered by said Commission.

The efforts of the appellant to prevent increases in utility rates which constitute an element in the cost of living will be greatly impaired if the said Company is permitted to increase its rates to the consuming public under the principles and terms set forth in the order of October 13, 1942. Such efforts would be impaired and defeated if said Company is allowed to demand and receive such increased rates and charges and the appellant and the consuming public would suffer a substantial and irreparable property loss if they were required to pay such increased rates and charges pending the determination of this appeal.

Wherefore, appellant prays that this honorable Court will:

(a) Specifically order that these proceedings shall operate as a stay of said Commission order of October 13, 1942.

(b) Order that an immediate hearing be held upon the above request for a stay, and fix a date for such hearing not earlier than three days after the date of filing hereof.

(c) Reverse, annul, and set aside said order and determination of said Commission.

(d) Grant such further and different relief as to his honorable Court may seem proper under the circumstances of the case.

LEON HENDERSON,
Price Administrator of the
Office of Price Administration

By DAVID GINSBURG
General Counsel

NATHANIEL L. NATHANSON
Assistant General Counsel

HARRY R. BOOTH
Utilities Counsel

W. RUSSELL GORMAN
Attorney
Legal Division
Office of Price Administration

Acknowledgment of Service

Service of the foregoing "Notice of Appeal" and "Petition of Appeal" acknowledged and a true copy thereof received this 18th day of November, 1942.

Public Utilities Commission
District of Columbia
By E. J. MILLIGAN
Executive Secretary
Public Utilities Commission, D. C.

283 Endorsed: Filed Dec 10 1942 Charles E. Stewart, Clerk

District Court of the United States
for the District of Columbia

No. 17806

LEON HENDERSON Price Administrator of the Office of Price Administration, *Appellant*, Federal Office Building No. 1 Washington, D. C.

v.

JAMES H. FLANAGAN, GREGORY HANKIN, AND C. W. KUTZ Being the Public Utilities Commission of the District of Columbia, *Appellees*.

Answer of Washington Gas Light Company

Comes now Washington Gas Light Company (hereinafter referred to as the "Company"), this 10th day of December, 1942, and files this Answer to the Petition of Ap-

peal filed in the above entitled proceeding, and respectfully states as follows:

1. The Company is an interested party in said proceeding in that Order No. 2401 of the Public Utilities Commission of the District of Columbia, dated October 13, 1942 (Exhibit A to the Petition) determined, fixed, and ordered rates, tolls, and charges to be charged by the Company for gas service in the District of Columbia.

2. The Company denies the averment that the Petitioner is a party affected by said decision and order of the Commission dated October 13, 1942.

3. The Company admits the averment that the Petitioner filed an intervening petition with the Commission on August 18, 1942, in Formal Case No. 316, and that the Commission granted the Petitioner Leave to intervene in said proceeding.

284 4. The Company admits the averment that on September 28, 1942, the Petitioner filed a petition with the Commission for a reopening of the proceeding for the purpose of receiving further evidence, and that said petition was denied by the Commission by its ruling of September 30, 1942.

5. The Company admits the averment that the Petitioner filed a petition for reconsideration with said Commission on November 12, 1942, and admits that said petition was denied by the Commission by its Order No. 2423, dated November 16, 1942.

6. The Company denies the averment that the Commission's decision and order of October 13, 1942, is illegal.

7. The Company denies each and every averment set forth in paragraphs numbered 1 to 9 inclusive of the Pefition.

8. The Company denies each and every averment set forth in the last unnumbered paragraph of the Petition, except that the Company states that it is without knowledge or information sufficient to form a belief as to the purposes of the appeal.

9. And for further answer to the Petition, the Company respectfully avers that the Petitioner is not entitled to

prosecute an appeal from said decision and order of the Commission dated October 13, 1942, because the Petitioner does not represent any persons having an interest in the proceeding before the Commission, but is an agency of the Federal Government, charged with the duty of administering the Emergency Price Control Act of 1942. Said Act, approved January 30, 1942, provides: "That nothing in this Act shall be construed to authorize the regulation of * * * rates charged by any common carrier or other public utility * * *" (Sec. 302(c)). That provision remains in the statute to this day, being unchanged by the amendatory Act of October 2, 1942. The Office of Price Administration was created by the Emergency Price Control Act, and the authority, duties, and functions of said Office and of the Price Administrator are defined and limited thereby.

284-1 And having completely answered the averments set forth in said Petition of Appeal, the Company respectfully prays that said Petition of Appeal be dismissed.

The Company moves the Court to dismiss this appeal for the reasons (1) that the Petitioner is not a proper appellant, and (2) that the appeal is without merit.

WASHINGTON GAS LIGHT COMPANY

By STODDARD M. STEVENS, JR.

E. BARRETT PRETTYMAN

C. OSCAR BERRY

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Statutes Involved

Paragraph 18 of the Act (37 Stat. 980, Section 43-317, D. C. Code, 1940) reads as follows:

> "That nothing in this section shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of this section. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement."

Paragraph 63 of the Act (37 Stat. 988, Section 43-703, D. C. Code, 1940) reads as follows:

> "That all rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the commission shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose."

Paragraphs 44, 45 and 46 (37 Stat. 984, Sections 43-414, 43-415, 43-416, D. C. Code, 1940) read as follows:

"Par. 44. That whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice."

"Par. 45. That if after making such investigation the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided."

"Par. 46. That notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in paragraph forty of this section, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint."

Paragraph 38 (37 Stat. 983, Section 43-408, D. C. Code, 1940) reads in part as follows:

"That upon its own initiative or upon reasonable complaint made against any public utility * * * the commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations or act

complained of shall be entered by the commission without a formal hearing."

Paragraphs 39 and 40 (37 Stat. 983, Sections 43-409 and 43-410, D. C. Code, 1940) read as follows:

"Par. 39. That the commission shall prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided."

"Par. 40. That the commission shall give the public utility and the complainant, if any; ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses."

Paragraph 32 of the Act (37 Stat. 982, Section 43-402, D. C. Code, 1940) reads as follows:

"That the commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it."

Paragraph 65, amended (49 Stat. 882, Section 43-705, D. C. Code, 1940), provides that any public utility, or any other person or corporation affected by any final order or decision of the Commission, may appeal to the District Court of the United States for the District of Columbia, and reads in part as follows:

"Any such appeal shall be heard upon the record before the Commission, and no new or additional

evidence shall be received by the said court. The said court, or any justice or justices thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

"Upon the conclusion of its hearing of any such appeal the court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action, and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

"Any party, including said Commission, may appeal from the order or decree of said court to the Court of Appeals of the District of Columbia, which shall thereupon have and take jurisdiction in every such appeal. Thereafter the Supreme Court of the United States may, upon a petition for certiorari granted in its discretion, review the said case."

The Emergency Price Control Act of 1942 (Public Law 421, 77th Congress) specifically provides in Section 302(c):

"* * * That nothing in this Act shall be construed to authorize the regulation of * * *(2) rates charged by any common carrier or other public utility, * * *."

The Act of October 2, 1942 (Public Law 729, 77th Congress), amending the Emergency Price Control Act, reads in part as follows:

(Sec. 1) "* * * *Provided*, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.

"SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of section 3 (a) and 3 (c), and clause (1) of section 302 (c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof."

Section 7 (c) reads as follows:

"(c) Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of section 2), or to invalidate any regulation, price schedule, or order issued or effective under such Act."

Order No. 2219, authorizing the investigation, reads as follows (caption omitted) (R. 281 in No. 8504):

"By the Commission: A sliding scale arrangement for fixing rates of the Washington Gas Light Company was established by Order No. 1458 of the Commission (Findings Nos. 1 and 2). Under the arrangement rates are to be adjusted as of September 1st of each year.

"IT IS ORDERED:

"Section 1. That an engineering and accounting investigation be made relative to the rates, tolls, charges, tariffs, rules, regulations and conditions of service of the Washington Gas Light Company, including an investigation in conformity with the sliding scale arrangement.

"Section 2. Notice is hereby given of the intention of the Commission to hold a public hearing on the subject matter of the investigations."

The notice of hearing dated July 21, 1942, reads as follows (caption omitted) (R. 282 in No. 8504):

"Notice is hereby given that the Public Utilities Commission of the District of Columbia will hold a formal public hearing on Tuesday, August 18, 1942, at 10:00 a. m., in Room 500, District Building, relative to the rates, tolls, charges, tariffs, rules, regulations, and conditions of service of the Washington Gas Light Company, to become effective September 1, 1942, in accordance with the sliding scale arrangement established by Order No. 1458."

Rule 7.3 and Rule 7.5 of the Tentative Rules of Practice and Procedure Before The Public Utilities Commission read as follows:

"RULE 7.3. *Action on Petition.* The Commission may grant or deny a petition for leave to intervene,

or may grant the petition upon such conditions and limitations as it may prescribe."

* * *

"RULE 7.5. *Effect on Issues.* The granting of a petition to intervene shall not have the effect of changing or enlarging the issues in the proceeding, except where such change or enlargment is expressly requested in the petition and is expressly granted by the Commission after opportunity for hearing upon the question has been afforded all other parties."

The Findings and Opinion of the Commission (R. 10-23 in No. 8504) (omitting the caption) read as follows:

NATURE OF PROCEEDING

This is a proceeding involving the usual annual determination of rates, tolls, charges, tariffs, rules, regulations, and conditions of service of the Washington Gas Light Company pursuant to the provisions of the sliding scale arrangement established by Order No. 1458, dated December 13, 1935.

The sliding scale arrangement provides that prior to the beginning of each rate year (defined as the twelve months' period from September 1 to August 31, inclusive) this Commission shall determine after public notice and opportunity for hearing:

(1) An amount to be applied for the decrease or increase of rates to be effective during the said rate year, and

(2) A schedule of rates, rules, and regulations accomplishing such decrease or increase.

On March 20, 1942 (Order No. 2219), the Commission ordered that an investigation be made, and on July 21, 1942, the Commission set the matter for hearing. Hearings were

held on August 18 and 19, 1942, and on September 4, 11, 14, and 30, 1942.

The rates in effect during the last test year (the twelve months' period ended June 30, 1942) were those established by Order No. 1921, effective as of September 1, 1940. These rates were based upon the operating experience of the Company for the test year July 1, 1939, to June 30, 1940.

During the present proceeding, we indicated that our responsibilities are twofold. In the first place, it is the duty of this Commission to determine, in accordance with the provisions of the sliding scale arrangement as such arrangement is now constituted, whether the Washington Gas Light Company is entitled to an increase in rates for the year commencing September 1, 1942, and the amount of such warranted increase. This responsibility is so clearcut that to ignore it would constitute an evasion of our duty and would be a serious reflection upon the ability of this Commission to cope with its problems in a fair and impartial manner.

Secondly, having made this determination, it is our duty to give recognition to existing conditions and the bearing of such conditions upon the question before us. In additon to the present economic situation, which admittedly is of vital importance, we must also consider the credit position of the Company and its ability to finance its requirements for plant expansion and to render adequate service to the consumers in the District of Columbia.

At the commencement of hearing in this proceeding, August 18, 1942, the Office of Price Administration, through H. R. Booth, its Utilities Counsel, filed with this Commission its petition for leave to intervene. This petition was granted, and Counsel for the Office of Price Administration attended all the hearings and submitted briefs.

Exhibits were presented by the Commission's Chief Accountant and Chief Engineer reflecting the results of their investigations, which extended over a period of several months. The Chief Engineer's testimony related to the allocation of the

rate base to service outside the District of Columbia. The Chief Accountant testified that computations in accordance with the sliding scale arrangement indicated that the Company was entitled to a rate increase of $324,718.06. The Company's computation indicated a rate increase of $381,597. The difference between the two amounts is occasioned entirely by certain adjustments to operating expenses and taxes and those required under Section 6 of the sliding scale arrangement made by the Commission's witness but protested by the Company.

Careful study has been given to all factors having a bearing upon these problems in arriving at the decisions hereinafter set forth.

STAFF ADJUSTMENTS

Payment to the Greater National Capital Committee

The question involved is whether or not the payment made by the Company is in the nature of a contribution or a sales promotion expense. The Greater National Capital Committee is an arm of the Washington Board of Trade, and its chief function is to attract visitors to the Nation's Capital. The principal means employed is that of inducing the holding of conventions in Washington. In Formal Cases 292 and 304 the Commission held that the benefits derived by the Washington Gas Light Company from this expenditure were of such a conjectural nature that it must be viewed as a donation to a worthy civic organization rather than a sales promotion expense as the latter term is ordinarily defined. We, likewise, hold this view and find further that in view of the present overcrowded condition of the city due to the war effort there is even less justification for such an expense. The amount in controversy, $88.85, stated by the Company as being a token payment for purposes of Commission ruling, should therefore be disallowed as an operating expense for rate-making purposes.

10a

Sales Promotion Expense

This issue arises by reason of the Commission's requirement that the Merchandising and Jobbing activities of the Company be segregated from its principal business of furnishing gas service and relates to the allocation of certain expenses applicable to both the sale of gas and the sale of appliances, namely the salaries paid retail salesmen and the cost of advertising appliances.

The Sales Promotion Department of the Company is composed of several divisions, and the salaries of the retail salesmen constitute only about 25% of the total salesmen's salaries. The remaining 75% covers wholesale and promotional salesmen who ordinarily are not engaged in the sale of appliances and therefore receive little or no commission. The retail salesmen are paid comparatively small salaries plus commissions on appliance sales. The commissions are paid not only on appliances sold by the Gas Company, but upon appliances sold by other dealers when such sales result from the efforts of the Gas Company's salesmen. In accounting for the salaries and commissions paid the retail salesmen, their entire salaries and the commissions paid on appliance sales by other dealers are charged to Sales Promotion Expenses, while commissions paid on appliances sold directly by the Gas Company are charged to Merchandising and Jobbing Expense. The Company contends that this practice is proper for the reason that it represents an allocation based upon the time of the retail salesman devoted to extolling the virtues of gas as a fuel and the actual sale of appliances. The Company cites the fact that on the average the salesmen close only one sale out of fifteen calls. The Commission's witness contends that the salaries paid these salesmen represent additional compensation for the selling of appliances, and such salaries should be accounted for in the same manner as the commissions—that is, upon the ratio of commissions paid on appliances sold by the Company to the total commissions paid.

The compensation of the retail salesman depends in major art on the sale of appliances, and it is therefore obvious that is major efforts are devoted to the selling of appliances. It ollows that the compensation paid these salesmen, whether it e in the form of commissions or salaries, is assignable to ales Promotion Expense and Merchandising and Jobbing on he basis of results produced, and since this is the method used y the Commission's witness, we think the adjustment is roper.

On the second item, of appliance advertising, the Company ontends that 80% of such advertising is a proper promotional xpense, whereas the Commission's witness has recommended hat only 50% of such expense be allowed. The only support or the 80% allocation advanced by the Company was the udgment of their Sales Manager, and the ratio of appliance ales by the Company to sales made by other dealers. The llocation made by the Commission's witness is based upon the ractice of the Company of paying, under certain conditions, 0% of the cost of advertising gas appliances by other dealers. n view of the Commission's requirements that the appliance usiness of the Company be segregated entirely from its gas usiness, the Merchandising and Jobbing activities of the Com- any must be viewed in the light of the relations of the Com- any with any other appliance dealer. The appliance or gen- ral advertising of the Company for the test year under con- ideration constituted only about 11% of the total advertising, he remainder being characterized as institutional advertising. The adjustment proposed by the Commission's witness relates nly to the former. The fact that the Company segregates ap- liance advertising from its other or institutional advertising ight of itself be sufficient grounds for saying that all of such dvertising relates entirely to the Merchandising Activities of he Company. However, in view of the practice of participat- ng in advertising campaigns of other dealers we will go no urther than the adjustment made by the Commission's wit- ess.

We hold that the aggregate adjustment of $26,824.75 applicable to the items discussed above is proper.

Expense of Financing

The Commission's witness excluded from operating expense certain costs incident to increasing the authorized capital stock of the Company, on the grounds that they pertain only to the securing of new capital and as such are properly chargeable to capital stock expense when and if the stock is issued. The Company contends that these expenditures should be permitted in operating expenses for the reason that, through no fault of the Company, the Commission was not organized and able to give the approval necessary when the stock in question ($4.25 preferred) could have been sold advantageously. We sympathize with the Company's position, but in view of the requirements of the classification of accounts and the nature of the items in question, and due further to the fact that the consumers likewise were not at fault, we cannot depart from proper accounting and therefore hold that the adjustments made by the Commission's witness, aggregating $3,256.67, are proper.

Payment to U. S. O.

The Commission's witness excluded from operating expense a payment of $1,250.00 to the U. S. O. on the grounds that such payment was a donation not necessary in the furnishing of gas service and as such properly includible in Account 538—Miscellaneous Income Deductions. The Company contends that this is not an ordinary donation, inasmuch as the U. S. O. is a war project backed by the Federal Government and that the morale and behavior of the armed forces are of vital concern to the Company and to all citizens. We agree, of course, that the U. S. O. is a necessary organization in the conduct of the war effort, but we cannot agree that the donation made by the Company is different from other donations to worthy causes. The customers of the Company are called

upon for direct donations to this organization, and they should not be called upon for a further donation in the form of increased rates for gas service. We, therefore, approve the adjustment as made by the staff.

Excess Profits Tax

The Commission's witness eliminated the excess profits tax paid for the year 1941 after adjustment for the effect of such elimination on normal taxes because of the possible future adverse effect upon consumers with little material benefit to the Company. The Company contends that it would not have been liable for excess profits tax if the Commission had been in a position to act expeditiously on its application for authority to issue $4.25 preferred stock in 1941 and that the Company had no "excess" profits in the popular sense of the word. We recognize the equity of this contention. However, we cannot overlook the fact that the recognition of excess profits tax as a proper element in the determination of rates for service under the rates of taxation presently proposed in the pending Revenue Act for 1942 would result in a continuing cycle of rate increases severely penalizing the consumer without materially benefiting the Company. We are of the opinion that as a general proposition, excess profits taxes under existing conditions should not be considered in the determination of rates. Therefore, the adjustment of $43,928.02 to eliminate this item is approved.

Section 6 Adjustment

This item relates to the adjustment under Section 6[1] of

[1] If, at any Adjustment Date, it appears that the operating expenses of the Companies for the Test Year were increased or decreased by reason of change in the rates for production labor, the unit price of natural gas, the delivered unit price of other fuels, or taxes, and the aggregate amount attributable to such change during the Test Year for any or each of the above enumerated items exceeds 5 per centum of the aggregate amount of any such item for the Test Year, then there shall be an adjustment in the Amount Available for Return equal to the effect of such change in unit costs for the entire year.

Order No. 1458 on account of the increase in the price of fuel. In making this adjustment the Company has used the inventory cost of fuel as of June 30, whereas the Commission's witness has used such cost as of May 31. The Commission's witness contends that since the operating expenses of the Company were not affected by the average cost of fuel as of June 30, 1942, the use of such cost would be contrary to the provisions of Section 6. The Company contends that the unit cost of fuel as of June 30 should be used, on the theory that the purpose of Section 6 is to provide for known increased costs. It is clear that the intent of Section 6 is to allow certain adjustments for increased costs, but it is equally clear that there is a definite limitation on the method of determining the amount of the adjustment. If we were to apply the purpose of Section 6 indiscriminately there is no doubt that other adjustments would be necessary, some upward and some downward. We think that a departure from the specific provisions of Section 6 would not be warranted, and even though it is recognized that the purpose of Section 6 is to provide for increased costs, we hold that the adjustment made by the Commission's witness is in accord with the specific provisions of Section 6 and that the disputed difference of $3,294.63 should not be considered in the determination of amount available for increase of rates.

OPERATING EXPENSES

In addition to the adjustments made by the witness for the Commission, Commissioner Hankin raised several questions relating to the propriety of certain operating expenses.[2] On these questions we have the following opinion and conclusion.

Order No. 1458, which established the sliding scale arrangement, provides that the Commission shall determine the net amount available for return for each test year by deducting from the gross operating revenue of the Company the ad-

[2] Three items aggregating $90 were conceded by the Company because of the insignificance of the amount, and adjustment has been made therefor.

justed operating expenses for the test year, the accruals for retirement reserve, reasonable accruals for uncollectible bills, and reasonable accrual for taxes.

The order further provides that the operating expenses of the Company shall be adjusted for any accounting departures[3] during the test year; for over or under accruals in taxes, uncollectible bills, and such other accrued accounts for which adjustment is provided by the prevailing accounting classification; and to exclude those expenses allocated to gas service outside of the District of Columbia.

Thus the sliding scale arrangement does not attempt to define operating expenses or to indicate that certain types of operating expenses should be excluded in determining the net amount available for return, beyond the adjustments described above. The sliding scale arrangement, however, does clearly indicate that operating expenses should be determined in accordance with the prevailing accounting classification.

On January 11, 1940 (Order No. 1846), this Commission prescribed for use by the Washington Gas Light Company the Federal Power Commission Uniform System of Accounts prescribed for Natural Gas Companies subject to the Provisions of The Natural Gas Act, with certain modifications to permit the continuance of the sliding scale arrangement. This system of accounts states the purpose of the operating expense accounts to be as follows:

> "The operating expense accounts (701 to 809) are designed to show in detail the cost (except depreciation, amortization and depletion, certain property losses, and taxes) of furnishing gas utility service."

It follows, therefore, that if the operating expenses of the Company are recorded in accordance with the prevailing Uniform System of Accounts the function of the Commission is to

[3] "Accounting departure" means a departure, not resulting solely from the exercise of judgment, from the correct application of the accounting classification and interpretations prescribed by the Commission, not in conflict with the sliding scale arrangement, prevailing at the date of such entry.

determine whether or not the expenses so recorded are reasonable. Obviously, the Commission itself cannot, collectively or individually, review the books of the Company to make a determination as to the reasonableness of every item and must depend upon its staff to call attention to those that appear questionable. This the staff has done, and we have herein expressed our opinion relative to such items. We find that the operating expenses of the Company for the test year ended June 30, 1942, excepting the adjustments heretofore discussed, have been recorded in accordance with the Uniform System of Accounts prescribed by this Commission and that such expenses are fair and reasonable and properly considered in the determination of rates under the sliding scale arrangement.

FEDERAL INCOME AND EXCESS PROFITS TAXES

The computations of the net amount available for rate increase presented by both the Company and the Commission's witness included accruals for Federal income taxes at the rate of 40% for the last six months of the test year under consideration (January 1, 1942, to June 30, 1942), in accordance with that provision of the sliding scale arrangement which provides for a reasonable accrual of taxes. For the first six months of such test year (July 1, 1941, to December 31, 1941), this same rate was applied in accordance with the provisions of Section 6 of the sliding scale arrangement.

However, present-day conditions compel us to consider whether accruals for Federal income taxes, at rates considerably higher than rates in effect in previous years, should be allowed in their entirety for rate-making purposes. Much has been said recently regarding the allowance of Federal income taxes on a normal-year basis rather than on the basis prevailing in a so-called "abnormal year." Our difficulty here lies in the necessity for making a distinction between normal and abnormal taxes. It is true that rates of taxation imposed during the year 1941 and proposed for the year 1942 are sub-

stantially in excess of rates imposed in prior years. However, it requires very little imagination to foresee that the proposed rate for 1942, while such rate is abnormal as compared with the rates in effect in prior years, may well be a normal or even a subnormal rate for some years to come. After weighing all factors to the best of our ability, we conclude that for the purpose of determining the amount available for rate increase for the rate year beginning September 1, 1942, the calculation of Federal income taxes for the test year under consideration (July 1, 1941, through June 30, 1942) at the rate of 31% is reasonable. Such a calculation will result in a further decrease of $115,863.09 in adjusted operating expenses and will eliminate the adjustment of $4,929.39 to provide for increase in taxes under the provisions of Section 6 of the sliding scale arrangement.

With respect to excess profits taxes, we are of the opinion that no increase in rates should be predicated upon the liability of a utility for excess profits taxes. For this reason we have disallowed as an operating expense for the test year ended June 30, 1942 the excess profits tax of $43,928.02, in order to prevent the direct inflationary effect which such allowance would invite.

The record indicates that the Company will not be liable for excess profits tax for the year 1942. However, to guard against the possibility that any increase in rates might result in the imposition upon the Company of liability for excess profits taxes on revenue derived from such rate increase, we requested the Company to propose a protective arrangement which would obviate such a possibility. The arrangement proposed by the Company, which in our opinion will achieve the desired result, is set forth below:

> "In the event such increased rates would result in the payment of excess profits taxes by the Washington Gas Light Company, any portion of the amount derived from the increased rates hereinafter authorized, which, if retained by the Company would be

subject to excess profits tax, shall be recorded in a specially provided deferred credit account. The amount derived from increased rates shall be deemed to be 2.28% of the amount billed for sales of gas subsequent to the effective date of this order. The above stated percent is the ratio of the increase authorized herein to the total sales of gas for the test year ended June 30, 1942, calculated at the rates hereinafter authorized.

"The amount recorded in the deferred credit account as of December 31, 1942, and as of December 31st of each year thereafter so long as this order shall remain in effect, shall be returned to the gas customers in the District of Columbia by appropriate deductions from gas bills rendered to such customers as soon after December 31st as practicable. The amount of individual refunds shall be determined by ascertaining, by classes of service, the relation of the amount refundable to the total amount billed during the month of December and applying such percentage to each customer's December bill. Refunds so determined shall be shown as credits on customers' bills as soon after December 31st as practicable. In the event the amount recorded in the deferred credit account as of December 31st is less than $10,000, such amount shall be treated as operating revenue."

FINANCIAL POSITION OF COMPANY

There is still another and very important problem for consideration, namely the financial position of the Company and particularly its ability to secure capital economically for the purpose of expending its plant to meet the growing demands for gas service. We must weigh the necessity for an increase in rates against the broad problem of adequate service. Low rates are desirable only when coupled with adequate service, and such service cannot be rendered by the Company if it is unable to secure funds to provide the necessary additional facilities. The District of Columbia has been characterized as the No. 1 defense area of the United States, and

it is vital that the Company be in a position at all times to provide adequate service.

It is a matter of record that the Company recently attempted to sell 40,000 shares of $5.00 cumulative preferred stock, but was successful only to the extent of being able to sell 18,206 shares of this stock. This was due to a number of factors, and a recitation of events and facts preceding and subsequent to the offering of this stock shows that the financial position of the Company merits our most serious consideration.

On January 17, 1941, the Company filed an application with this Commission for authority to increase its capitalization by 90,000 shares of $4.25 preferred stock. Due principally to the lack of a quorum on the Commission this application was not acted upon until March 26, 1942 (Order No. 2221). At that time, due to depressed market conditions, the Company was unable to sell this newly created stock and endeavored to sell 40,000 shares of its $5.00 cumulative preferred stock with the result heretofore stated. In approving the sale of the $5.00 stock the Commission considered, among other factors, the financial position of the Company as of December 31, 1941. At that time income deductions and preferred dividends were earned 1.88 times, and the earnings per share of common stock were $2.24. Our order was issued April 21, 1942, and income for the twelve months ended April 30, 1942, showed that income deductions and preferred dividend coverage had declined to 1.75 times, while earnings per share of common had declined to $1.96. For the twelve months ended July 31, 1942, the former figure had declined to 1.67 times and the latter to $1.80. This decline in income is not due entirely to increased provision for Federal income taxes. Substantial increases in the cost of labor and material have occurred during the period under discussion, and such increases have been provided for only in part in the determination of the amount available for rate increase. Labor costs included in operating expenses for the test year under consideration exceed labor costs for the prior test year by more than $300,000, a part of

which was attributable to the increased volume of business.

INCREASE IN RATES WARRANTED

After careful consideration of all factors having a bearing on this case, including the fact that the credit position of the Washington Gas Light Company depends in large measure upon the integrity of this Commission in administering the sliding scale arrangement, we are of the opinion that, after making the adjustments hereinbefore approved, the amount available for increase in rates under the sliding scale arrangement for the rate year beginning September 1, 1942 is $201,424.74.

This increase in rates will not restore the earnings of the Company to the level obtaining prior to the decline, nor is it the intent of the sliding scale arrangement to do so. It will, however, tend to arrest the decline and preserve the principles inherent in the sliding scale arrangement, on which, as heretofore stated, the credit position of the Company depends in large measure.

The amount of $201,424.74 was determined as follows:

Adjusted Operating Revenues		$8,918,656.27
Adjusted Operating Expenses		7,301,988.67
Net amount available for return prior to adjustment allowed under Section 6 of Order No. 1458		$1,616,667.60
Adjustment under Section 6 of Order No. 1458		
Production Labor	$20,043.06	
Production Fuels	41,572.89	
		(61,615.95)
Adjusted amount available for return		$1,555,051.65
Return allowed (6½% of Rate Base of $28,088,322.57)		1,825,740.97
Deficiency in return		270,689.32
Amount available for rate increase for rate year beginning September 1, 1942 (75% of Deficiency)		203,016.99
Less: Undistributed portion of amount available for reduction of rates for rate year beginning September 1, 1940		(1,592.25)
Net amount available for rate increase		$ 201,424.74

It will be noted that the final conclusion as to the net amount available for increase in rates is $123,293.32 less than the amount determined by the Commission's staff. This difference is due to the elimination from operating expenses of the $90.00 conceded by the Company (see Footnote 2—Page 7) and to the computation of the accrual for Federal Income Taxes at 31% rather than 40%.

DISPOSITION OF AMOUNT AVAILABLE FOR INCREASED RATES

The Company presented revised rate schedules which would increase its annual revenues by $357,500. This amount is $156,075 in excess of the amount that we have concluded is available for rate increase. The staff of the Commission has prepared new rate schedules providing increased annual revenue of $200,141, to be apportioned among the different classes of consumers as follows:

Residential	$ 53,429
Commercial	35,908
Domestic Space Heating	101,208
Commercial Space Heating	6,387
Seasonal Off Peak	218
Wholesale Apartment House	2,991
	$200,141

The difference of $1,283.74 between the above amount and the amount found available for rate increase will be held available for future rate increase.

The rate schedules presented by the Company eliminated the present separate schedule for space heating, proposing to include future consumption for that purpose along with regular domestic or commercial use. This will eliminate the necessity of maintaining two separate meters on premises using gas for both space heating and domestic or commercial purposes. We

conclude that, in view of a possible meter shortage, the elimination of the separate space heating schedule is warranted, and the schedule submitted by the Commission's staff have been prepared on this basis. We further conclude that the apportionment of the $200,141 as the amount available for increase in rates is fair and equitable.

EFFECT OF INCREASED RATES

The new domestic rates will result in an average increase of $.03 per month per customer. Domestic customers using 2,500 cubic feet or less per month will sustain no increase. Space heating customers' monthly bills for the eight-month heating season will be increased an average of $.57 for all customers. The typical space heating customer's bills will be increased by $.72 per month for the eight-month heating season. The average increase for commercial and industrial customers will amount to $.46 per month. The total increase for all customers is 2.28% in excess of rates for the preceding year.

The cost of gas constitutes but 1.17% of the average cost of living in Washington, according to statistics of the Labor Department, and based on the percentage increase for gas service just stated the cost of living index would be increased by only about 1/37 of 1%. We cannot conceive that such an increase would have material inflationary tendencies.

CONCLUSIONS AND FINDINGS

We conclude and find as follows:

(1) That the rate base for determining rates to be charged by the Washington Gas Light Company under the sliding scale arrangement for the twelve-month period beginning September 1, 1942, is $28,088,322.57, including working capital of $1,172,656.02, $597,044.81 of which is for cash working capital and $575,611.21 for materials and supplies.

(2) That gross operating revenues during the test year ended June 30, 1942 amounted to $8,918,656.27; that adjusted operating expenses including taxes amounted to $7,301,988.67; that the adjustments providing for increase in certain operating costs in accordance with Section 6 of Order No. 1458 amount to $61,615.95; that the amount available for return is $1,555,051.65; that the amount to be reflected in increased rates for the rate year beginning September 1, 1942, after considering $1,592.25 remaining from the amount available for rate decreases authorized by Order No. 1921 dated August 23, 1940, is $201,424.74.

(3) That the amount of $201,424.74 should be distributed: $53,429 to Schedule "A," $101,208 to domestic space heating customers formerly served under Schedule "B" who will hereafter be served under Schedule "A," $35,908 to Schedule "C," $6,387 to commercial space heating customers formerly served under Schedule "B" who will hereafter be served under Schedule "C," $218 to Schedule "E," $2,991 to Schedule "F," and $1,283.74 to subsequent years' rate adjustment.

An appropriate order will issue.

By the Commission (Chairman Flanagan and Commissioner Kutz). Commissioner Hankin dissents for the reasons stated in the accompanying dissenting opinion.

E. J. MILLIGAN,
Executive Secretary.

October 13, 1942